Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

STATE OF ARIZONA,
PETITIONER,

-vs-

RODNEY JOSEPH GANT,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTION PRESENTED FOR REVIEW

When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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PETITION FOR WRIT OF CERTIORARI

The State of Arizona respectfully petitions for a writ of certiorari to review the Arizona Court of Appeals' March 29, 2002 opinion. limiting the scope of *New York v. Belton*, in cases of recent occupancy, to situations in which the police initiated or attempted to initiate contact before the suspect exited the vehicle.

OPINION BELOW

The Court of Appeals' opinion is reported as *State v. Gant*, 202 Ariz. 240, 43 P.3d 188 (App. 2002). Appendix ("App.") A. The Arizona Supreme Court's order denying review without comment is not reported. App. B.

STATEMENT OF JURISDICTION

The Arizona Court of Appeals, Division Two, entered the judgment from which relief is sought on March 29, 2002. App. A. The Arizona Supreme Court issued its order denying review on September 26, 2002. App. B. Petitioner timely filed this petition for writ of certiorari within ninety days of the order denying review. This Court has jurisdiction pursuant to United States Constitution Article III, Section 2; 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution, which provides in pertinent part:

> Section 1. No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Arizona courts, along with many other state and federal jurisdictions, have misconstrued *New York v. Belton*, 453 U.S. 454 (1981), by imposing an unwarranted subjective prerequisite: that the police may not search a recent occupant's vehicle incident to his arrest unless the suspect was actually or constructively aware of the police before getting out of the vehicle. Injecting an "awareness" element and an "attempt to contact before exit" requirement results in an unworkable rule that unduly limits *Belton* and conflicts with the decisions of numerous state and federal circuits. To prevent the present confusion about *Belton* from hindering the police as they attempt to do their duty in a safe and consistent fashion, this Court should grant certiorari, resolve the conflict among the various state and federal courts, and reverse the Arizona Court of Appeals' decision.

A. MATERIAL FACTS.

Police officers, aware of an outstanding warrant for Gant's arrest, watched Gant drive his car into a residential driveway and stop. *Gant*, 43 P.3d at 190, ¶ 3. An officer walked toward Gant's car and shined a flashlight in the window, recognizing Gant's face from a previous contact. *Id.* While the officer was walking toward the car, Gant got out of the vehicle and started walking toward the officer. *Id.* The officer called Gant by name, and Gant acknowledged his identity. *Id.* The officer immediately arrested Gant on the warrant. *Id.* The officers secured Gant in a patrol car and began a search of the passenger compartment of Gant's vehicle, where they found contraband that gave rise to charges of unlawful possession of cocaine for sale and unlawful possession of drug paraphernalia. *Id.* at 191, ¶¶ 1, 3.

B. PROCEEDINGS BELOW.

The trial court denied Gant's motion to suppress the contraband, holding that the police had conducted a lawful search incident to Gant's arrest. *Gant*, 43 P.3d at 191, ¶ 5. On review of Gant's conviction, the Arizona Court of Appeals determined that Gant "voluntarily—that is, not in response to police direction—stopped his vehicle, got out, exited it, and began to walk away from it." *Id.* at 192, ¶ 9. The court held that the record did not evince any attempt by the police to initiate contact while Gant was in the vehicle, or indicate that Gant had attempted to evade contact, or show that Gant was aware of the police before alighting.[1] *Id.* at 193, ¶ 13.

On those facts, the court of appeals held that the trial court had erred in refusing to suppress the evidence, because *Belton*, "[b]y its own terms, ... applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Gant*, at 192, ¶ 11 (quoting *United States v. Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). The *Gant* court premised its holding entirely on Fourth Amendment law.

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1. This Court rarely grants certiorari to resolve factual issues, and it need not resolve any here. *See* Rule 10, Rules of the Supreme Court. The operative facts are not in dispute. Although the Arizona Court of Appeals characterized the trial court record as insufficient to meet the State's burden of proving the constitutionality of the warrantless search, the alleged deficiency related solely to the subjective factors that the *Gant* court held dispositive—factors that Petitioner contends are irrelevant: whether Gant was aware of the police before alighting and whether the police attempted to make contact before Gant exited the vehicle. The objective facts necessary to this Court's review—Gant's recent occupancy of the vehicle, his immediate valid arrest in the near vicinity of the vehicle, and the contemporaneous nature of the search—were not in dispute below, and the trial court record fully supports them.

Petitioner sought discretionary review by the Arizona Supreme Court, contending, inter alia, that this Court had announced a straightforward, objective rule in *Belton*: the arrestee's occupancy *or recent occupancy* of the vehicle at the time of arrest justifies, without more, a search of the vehicle's passenger compartment incident to the arrest. Petitioner argued that the court of appeals' analysis had injected unwarranted subjectivity by conditioning the application of *Belton* on the suspect's and the police officers' states of mind. Petitioner urged Arizona's highest court to hold that it is irrelevant under *Belton* (1) whether the suspect is aware of the police before alighting and (2) irrelevant whether the police initiate contact, or attempt to do so, before the suspect exits the vehicle. The Arizona Supreme Court denied review without comment, thereby allowing the court of appeals' published opinion to stand.

REASONS TO GRANT THE PETITION

A. SUMMARY OF THE ARGUMENT.

Under *New York v. Belton*, it is irrelevant (1) whether a recent occupant was aware of the police before alighting from the vehicle, and (2) whether the police initiated contact, or attempted to do so, before the suspect exited the vehicle. All that *Belton* requires is that the arrestee be a recent occupant of the vehicle and that the search of the vehicle is conducted incident to the suspect's valid arrest.

The Arizona Court of Appeals erred by holding in *State v. Gant* that *Belton* is inapplicable absent evidence of the suspect's actual or constructive awareness of the police before getting out of the vehicle. The decision below acknowledges and epitomizes a nationwide split of authority concerning this issue among various federal and state jurisdictions. This Court should grant certiorari, resolve the conflict, and reverse the *Gant* decision.[2]

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2. This Court has recently shown interest in resolving this issue. Two years ago the Court granted a petition for writ of certiorari in *Florida v. Thomas*, 532 U.S. 774 (2001) which raised the same issue. After hearing oral argument, the Court dismissed the matter for lack of subject matter jurisdiction. *Id.* at 775. The instant case lacks the jurisdictional defect that prevented this Court's review of the Florida case. The Arizona Court of Appeals expressly held that the warrantless search of Gant's vehicle did not satisfy the requirements of *Chimel v. California*, 395 U.S. 752 (1969) (warrantless search incident to arrest of suspect inside a dwelling was unconstitutional to the extent it exceeded the "area from within which he might gain possession of a weapon or destructible evidence"). *Gant*, 43 P.3d at 195, ¶ 15. The *Gant* court also found that the officers lacked probable cause to search the vehicle. *Id.* at ¶ 17.

B. ARGUMENT: THE *GANT* COURT ERRED IN DETERMINING THAT BELTON DOES NOT APPLY WHEN THE INITIAL POLICE CONTACT OCCURS AFTER THE SUSPECT HAS EXITED THE VEHICLE OF HIS OWN ACCORD.

In *Belton*, this Court determined that, "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460. Thus, the arrest itself is the triggering mechanism of a vehicle search incident to the arrest, not whether the police initiated or attempted to initiate contact before the suspect alighted from the vehicle. *See United States v. Robinson*, 414 U.S. 218, 235 (1973) ("It is the fact of the lawful arrest which establishes the authority to search."). *Belton* established an objective bright-line rule that should be applied in a simple and straightforward fashion, regardless of the suspect's actual or constructive state of mind before getting out of the car. *See Belton*, 453 U.S. 458–59 (seeking to articulate a "straightforward rule, easily applied, and predictably enforced").

In *Gant*, the Arizona Court of Appeals determined that *Belton* is inapplicable unless the suspect was actually or constructively aware of the police before getting out of the vehicle. Specifically, the court held that *Belton* "applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Gant*, 43 P.3d at 192, ¶ 11 (quoting *Hudgins*, 52 F.3d at 119).

The *Gant* court erred in determining that *Belton* does not apply when the initial police contact occurs after the suspect has exited the vehicle of his own accord. In reaching that conclusion, the court unjustifiably adopted a rationale contrary to *Belton*'s reasoning and purpose, thereby blurring the bright-line rule beyond any predictable, consistent applicability.

1. State and federal courts nationwide have issued conflicting decisions on this question.

a. Conflicting decisions in the federal jurisdictions.

The *Gant* court relied heavily on *Hudgins*. In *Hudgins* the court held:

> [W]here the defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fit within *Belton's* bright-line rule, and a case-by-case analysis of the reasonableness of the search under *Chimel* becomes necessary.

52 F.3d at 119. But *Hudgins* conflicts with decisions in several federal circuits that have rendered less restrictive interpretations of *Belton*.

In *United States v. Snook*, 88 F.3d 605 (8th Cir. 1996), the court affirmed the search of the arrestee's automobile under *Belton*. Upholding the search incident to arrest, the court wrote: "The fact that Snook had just stepped out of his vehicle as the officer arrived and before his arrest does not alter his status as an 'occupant' of the vehicle." 88 F.3d at 608. As in the present case, the defense had argued that *Belton* did not apply because the suspect had just stepped out of the car and was therefore not an occupant at the time of his arrest. The court explicitly rejected this argument and determined that although Snook had stepped out of the vehicle of his own accord, he was an occupant for purposes of *Belton*.

In *United States v. Franco*, 981 F.2d 470 (10th Cir. 1992), the court upheld a search incident to arrest under similar circumstances. "Such a search is permissible notwithstanding the fact that the arrestee is out of the automobile and under the control of the officer. Mr. Franco was a recent occupant of his vehicle and the arrest was made in close proximity to his vehicle." 981 F.2d at 473 (quotation marks omitted). Reviewing the policy considerations underlying *Belton*, the court further determined that "the law simply does not require the

arresting officer to mentally sift through all these possibilities during an arrest, before deciding whether he may lawfully search within the vehicle." *Id.* (quotation marks omitted).

In *United States v. Arango*, 879 F.2d 1501 (7th Cir. 1989), the defense argued that the search incident to arrest was invalid because the defendant, who had attempted to flee on foot, was approximately a block from the vehicle when apprehended. The court rejected this argument and held that the search was consistent with *Belton*. The court determined that the law:

> "does not require the arresting officer to undergo a detailed analysis, at the time of arrest, of whether the arrestee, handcuffed or not, could reach into the car to seize some item within, either as a weapon or to destroy evidence, or for some altogether different reason. The facts surrounding each arrest are unique, and it is not by any means inconceivable under those various possibilities that an arrestee could gain control of some item within the automobile."

Arango, 879 F.2d at 1506-07 (quoting *United States v. Cotton*, 751 F.2d 1146, 1148 (10th Cir. 1985).

Similarly, to require a police officer in the field to make instantaneous determinations regarding the suspect's motivation for exiting the vehicle undermines the policy underlying *Belton* and does not further "the Court's preference for a straightforward rule for guidance of police officers and avoidance of hindsight determinations in litigation." *See United States v. Karlin*, 852 F.2d 968, 971 (7th Cir. 1988).

In *United States v. Abel*, 707 F.2d 1013 (9th Cir. 1983),[3] the court affirmed the vehicle search under *Belton* because of the arrestee's spatio-temporal association with the vehicle. The police first contacted the suspect after they had seen him exit his vehicle and walk toward a house, and the suspect apparently was unaware of the police

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3. *Overruled on other grounds by United States v. Abel*, 469 U.S. 45, 56 (1984).

until they detained and arrested him in front of the house. 707 F.2d at 1015.

In *United States v. Willis*, 37 F.3d 313 (7th Cir. 1994), the police had seen the suspect in the car but first contacted him while he squatted furtively outside the car, where he claimed merely to be "changing a tire." 37 F.3d at 315. The court concluded that Willis was an occupant for *Belton* purposes. 37 F.3d at 317.

Another panel of the Seventh Circuit has suggested that where evidence of actual occupancy is lacking, a suspect's "positive link" with the vehicle may be sufficient to uphold a vehicle search contemporaneous with the suspect's arrest. *See United States v. Adams*, 26 F.3d 702 (7th Cir. 1994) (because the suspect was neither an occupant of the searched vehicle nor positively linked to it prior to his arrest, the search did not fall within the scope of *Belton*).

The split among the federal circuits is apparent when comparing the foregoing decisions with *Hudgins* and with *United States v. Strahan*, 984 F.2d 155 (6th Cir. 1993), also cited in *Gant*. In *Strahan*, the court determined that Strahan was approximately thirty feet from his vehicle when arrested. 984 F.2d at 159. The court held that Strahan was not an occupant of the vehicle and that *Chimel*, not *Belton*, governed. *Id.* Similarly, in *United States v. Fafowora*, 865 F.2d 360 (D.C. Cir. 1989), also cited in *Gant*, the court held the search incident to arrest improper because the suspects had been walking away from their jeep and the contact had occurred well outside of the vehicle. 865 F.2d at 362. The court reasoned that where the police come upon an arrestee outside of an automobile, no bright-line rule is required. *Id.* Instead, the court held that the *Chimel*, "area of control" analysis applies. *Id.*

The opinion in *United States v. Tobon-Sierra*, 954 F. Supp. 73 (S.D. N.Y. 1997), acknowledged the conflict within the federal system. The district court noted that several circuits have approved the search of a vehicle under *Belton* when the suspect was a recent occupant and was arrested near the car. 954 F. Supp. at 76. Those circuits did not require any finding that the approach of law enforcement agents had motivated the suspect to leave the vehicle. *Id.* The district court distinguished the cases cited by the defense in *Tobon-Sierra* that depended upon a contact initiated by police, but

ultimately declined to reach the issue because the defendant had exited the vehicle in response to police contact. 954 F. Supp. at 77.

b. Conflicting decisions in the state jurisdictions.

A review of state appellate court decisions reveals a wide split of authority there as well. Some jurisdictions have held, as in *Gant*, that an arrestee is a "recent occupant" of a vehicle only where a law enforcement officer initiates contact while the suspect is inside the vehicle. *See, e.g., Thomas v. State*, 761 So. 2d 1010, 1014 (Fla. 1999);[4] *State v. Foster*, 905 P.2d 1032, 1038–39 (Idaho App. 1995); *Gibson v. State,* 733 N.E.2d 945, 955 (Ind. App. 2000); *Commonwealth v. Santiago*, 575 N.E.2d 350, 353–54 (Mass. 1991); *People v. Fernengel*, 549 N.W.2d 361, 363 (Mich. 1996).

Other states have determined that a recent occupant of a vehicle is an occupant for *Belton* purposes whether or not a law enforcement officer initiates contact while the suspect is in the vehicle. *See, e.g., State v. McLendon*, 490 So. 2d 1308, 1309 (Fla. App. 1986); *People v. Bosnak*, 633 N.E.2d 1322, 1326–27 (Ill. App. 1994); *Glasco v. Commonwealth*, 513 S.E.2d 137, 141–42 (Va. 1999); *State v. Stroud*, 720 P.2d 436, 439 (Wash. 1986); *State v. Fore*, 783 P.2d 626, 631–32 (Wash. App. 1989).

In *Fore*, for example, the court noted that the two suspects, who were standing some distance from the vehicle when they were arrested, had been "occupants of the moving vehicle just a few minutes prior to the arrest" and were "sufficiently close [to the vehicle] to be immediately visible to the arriving officers." 783 P.2d at 631. The court saw no need to "explore the outer boundaries of a permissible vehicle search incident to an arrest" because the search was "sufficiently proximate, both temporally and physically, to the arrest." *Id.*; *see also McLendon*, 490 So. 2d at 1309 (suspect, unaware of police until an undercover officer arrested him inside a service station, twenty to thirty feet away from the vehicle, was an

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4. This was the case that prompted this Court's grant of certiorari in *Florida v. Thomas*, 532 U.S. 774 (2001).

"occupant" for *Belton* purposes). This view is consistent with the reasoning of *Belton* and is in conflict with the view that the *Gant* court adopted.

2. *This Court should resolve the conflict among the state and federal courts by making clear that* Belton *requires only recent occupancy, determined by the arrestee's spatio-temporal proximity to the vehicle, without regard to the arrestee's state of mind.*

The legality of a vehicle search incident to a recent occupant's valid arrest should not turn on whether the suspect was actually or constructively aware of the police before he exited the vehicle. The *Gant* approach creates the very problems for police and courts that *Belton* sought to avoid. For example, any "awareness of the police" test is antithetical to undercover police work. The whole idea of undercover law enforcement activity, particularly arrests effected by undercover officers, is to avoid announcing the presence of the police before apprehending the offender. *See McLendon*, 490 So. 2d at 139 (*Belton* search upheld where undercover officer did not announce his presence until it was safe to arrest murder suspect inside a building, twenty or thirty feet from the door of the suspect's car). It would not be in the public's interest to force undercover officers to elect whether to announce their identity prematurely to comply with *Gant*'s pre-exit contact rule or to forego a *Belton* search by remaining incognito until they can physically detain the suspect after he exits the vehicle.[5]

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5. Another disadvantage inherent in a contact-before-exit rule is that it encourages risky behavior by police officers and suspects alike. For the police it poses a dilemma: should the officer calmly approach the vehicle and risk foregoing a *Belton* search if the suspect emerges "unaware," or should the officer race toward the vehicle, either on foot or in his own vehicle, and likely escalate the danger to himself and others while trying to "signal confrontation" or prevent the suspect's exit? *See State v. Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999) (to conduct a valid search under *Belton*, police officers should

(continued...)

Even where police officers are in uniform, a rule requiring case-by-case determinations of what prompted the suspect to exit the vehicle is certain to spawn confusion among law enforcement personnel, generate unwarranted mini-trials on subjective factual minutiae, and result in additional inconsistent legal rulings by courts nationwide. In jurisdictions that have espoused the *Gant* rule or a similar rule, trial courts will be burdened with mini-trials on defendants' and police officers' motivations and their actions in furtherance thereof in virtually every instance in which the government relies on *Belton*. Along with the inevitable inconsistent results, there may be substantial additional expenditures of time and resources due to the circumstantial nature of state-of-mind evidence.

Police officers' subjective intentions rarely factor into Fourth Amendment analysis.[6] Police should not be required to memorialize what they intended or attempted to do to get the suspect's attention while he was in the car, but should merely be required to record the timing and location of the arrest in relation to the arrestee's occupancy of the automobile. Moreover, no rule or standard of review should be based upon a criminal defendant's after-the-fact averments about his mental processes. *See State v. Medrano*, 914 P.2d 225, 227

(...continued)
not have to run a footrace to the suspect's vehicle); *State v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992) (same). Suspects, in turn, may respond violently to "signal[ed] confrontation" by attempting to escape in the vehicle or by using firearms or other weapons that they might not otherwise have used.

6. *See Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (objective circumstances of traffic stop allow officer to order driver out of car, "subjective thoughts notwithstanding"); *Whren v. United States*, 517 U.S. 806, 811-13 (1996) (Supreme Court is "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers."); *United States v. Robinson*, 414 U.S. 218, 236 & n.7 (1973) (availability of "search incident to arrest" for officer safety does not depend on the officer's subjective mind set).

(Ariz. 1996) (murder defendant's self-serving testimony about his mental state at the time of the offense was "subject to skepticism").[7]

Fourth Amendment issues are fact-intensive by nature. But in cases where the suspect exits the vehicle before the police establish contact with him, it would be more consistent with the principles that underlie *Belton* to focus on the suspect's spatio-temporal proximity to the vehicle rather than upon his actual or constructive awareness of the police. Unlike questions concerning the suspect's awareness, questions of spatio-temporal proximity to the vehicle at the time of arrest are readily quantifiable in terms of time and distance. The police can objectively record such information at the scene of the arrest, and defendants can challenge it in court with contrary objective evidence.

In issuing *Belton*, this Court intended to articulate "a single, familiar standard" that police officers could quickly and consistently apply to the circumstances that confront them. *Belton*, 453 U.S. at 458 (quotation marks omitted). A workable standard is essential:

> [T]he protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.

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7. A rule based on a suspect's actual or constructive awareness of the police invites litigation concerning an individual defendant's physical or mental condition, such as vision, hearing, and mental acuity, along with questions about external influences on perception, such as intoxication, weather conditions, lighting, ambient noise, and the physical characteristics of the defendant's vehicle—facts that are irrelevant under a spatio-temporal proximity analysis.

Id. (quotation marks omitted). Only an objective test—occupancy or recent occupancy determined by the suspect's spatio-temporal proximity to the vehicle—can accomplish that.[8]

The Arizona Court of Appeals, with the Arizona Supreme Court's tacit approval, has nullified *Belton*'s objective rule by rendering it dependent upon the suspect's actual or constructive state of mind. Injecting subjective factors of awareness, evasive intent, and "attempt to initiate contact" contravenes the very nature of a bright-line rule. This Court crafted the *Belton* rule, and only this Court can modify its own holdings, notwithstanding the *Gant* court's attempt to do so in Arizona.[9] Application of the *Belton* rule should have no factual predicate other than the lawful arrest of a recent occupant. To treat

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8. Gant's very recent occupancy of his vehicle at the time of his arrest is uncontested and undeniable, which leaves the potential "outer limits" question for another case that might present that issue. *See, e.g. State v. Porter*, 6 P.3d 1245, 1249–50 (Wash. App. 2000) (*Belton* held inapplicable where suspect was arrested while walking his dog 300 feet from the vehicle).

9. Because arrest alone triggers a *Belton* search, this Court's decision in *Knowles v. Iowa*, 525 U.S. 113 (1998). is not inconsistent with Petitioner's prayer for relief. *Knowles* is inapposite because there was no arrest in that case—only the issuance of a traffic citation. This Court determined that two of the concerns supporting a vehicle search incident to an arrest—officer safety and the need to preserve evidence—are either absent altogether or present to a lesser extent in citation situations. 525 U.S. at 118–19. But under *Belton*, those factors are *presumed* present in every custodial arrest situation, obviating case-by-case analysis. *Belton*, 453 U.S. at 461; *Bailey v. State*, 12 P.3d 173, 177 (Wyo. 2000). Thus, where an arrest has been made, factual minutiae concerning who initiated contact with whom or who was aware of whom likewise are irrelevant under *Belton*'s bright-line rule. For *Belton* purposes, a citation (as in *Knowles*) is not the functional equivalent of a custodial arrest, because only a valid arrest can trigger a *Belton* search. *Knowles* did not modify the *Belton* rule but simply declined to extend its application beyond custodial arrests. *Bailey*, 12 P.3d at 177.

the *Belton* rule differently is to destroy the rule's purpose and its "bright-line" nature.

Gant was lawfully arrested on an outstanding warrant. 43 P.3d at 190, ¶ 3. What transpired factually before his valid arrest as a recent occupant of his vehicle is of no moment. The arrest alone triggered application of the *Belton* rule, and the ensuing search of the vehicle incident to that lawful arrest was constitutionally permissible and reasonable. There is no need to inquire whether there was additional authority for the search, such as danger to the officers or a need to preserve evidence. This Court has specifically rejected any need for a case-by-case examination of the reasons supporting a search incident to arrest; the lawful arrest itself is sufficient. *Belton*, 453 U.S. at 459–60, (citing *Robinson*, 414 U.S. at 235).

The Arizona courts, along with many other state and federal jurisdictions, have misconstrued *Belton*. Injecting an "awareness" element and an "attempt to contact before exit" requirement results in an unworkable rule that contravenes *Belton* and conflicts with the decisions of numerous state and federal circuits. To prevent the present confusion about *Belton* from unduly hindering the police and generating unnecessary litigation on factual minutiae, this Court should grant certiorari, resolve the conflict among the various state and federal courts, and reverse the Arizona Court of Appeals' decision.

CONCLUSION

Based on the foregoing authorities and arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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Attorneys for PETITIONER

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APPENDIX A

43 P.3d 188
202 Ariz. 240

The STATE of Arizona, Appellee,

v.

Rodney Joseph GANT, Appellant.

No. 2 CA–CR 2000–0430.

Court of Appeals of Arizona,
Division 2, Department A.

March 29, 2002

Defendant was convicted in the Superior Court, Pima County, No. CR- 20000042, Clark W. Munger, J., of unlawful possession of cocaine for sale and unlawful possession of drug paraphernalia. Defendant appealed. The Court of Appeals, Brammer, P.J., held that: (1) as a matter of first impression, evidence did not support a finding that the police were attempting to initiate contact with drug defendant while he was in the vehicle either by confronting him or by signaling an intent to confront him, and thus, warrantless search of defendant's vehicle was not lawful as a "contemporaneous incident" of lawful arrest; (2) warrantless search of drug defendant's vehicle was not justified as a search incident to arrest; and (3) automobile exception allowing police to conduct warrantless search of drug defendant's vehicle based on probable cause was inapplicable.

Reversed.

Pelander, J., concurred specially and filed an opinion.

[Headnotes omitted]

Janet Napolitano, Arizona Attorney General, by Randall M. Howe and Eric J. Olsson, Tucson for appellee.

Law Offices of Thomas Jacobs, by Thomas Jacobs, Tucson for appellant.

OPINION

BRAMMER, Presiding Judge.

¶ 1 After a jury trial, appellant Rodney Gant was found guilty of unlawful possession of cocaine for sale and unlawful possession of drug paraphernalia. The trial court sentenced him to concurrent, mitigated prison terms, the longest of which was three years. Because we agree with Gant that the trial court erred in denying his motion to suppress evidence, we reverse his convictions.

Standard of Review and Background

¶ 2 Gant argues that the trial court erred in denying his motion to suppress a handgun and a plastic bag of cocaine found when his vehicle was searched after his arrest, asserting that the warrantless search violated his Fourth Amendment rights. When reviewing a trial court's ruling on a motion to suppress evidence based on an alleged Fourth Amendment violation, we defer to the court's factual findings but review de novo mixed questions of law and fact. *State v. Wyman,* 197 Ariz. 10, 3 P.3d 392 (App.2000). Because warrantless searches are presumptively unreasonable and unconstitutional under the Fourth Amendment, the state bears the burden of proving the lawfulness of the acquisition of evidence seized without a warrant. *Rodriguez v. Arellano,* 194 Ariz. 211, 979 P.2d 539 (App.1999); *see also State v. Valle,* 196 Ariz. 324, 996 P.2d 125 (App.2000). In determining whether the state has carried that burden, we consider only the evidence presented at the suppression hearing. *See State v. Sanchez,* 200 Ariz. 163, 24 P.3d 610 (App.2001). And, we view that evidence in the light most favorable to sustaining the trial court's ruling. *Id.*

¶ 3 At the hearing on Gant's motion to suppress, the court stated:

> Are any of the facts in issue? It seemed to me that from your respective briefs, that there didn't seem to be any disagreement. As I understand the facts—and let me repeat what I understand they are: That this arose out of a report of possible narcotic activity; . . . police went to the residence, knocked on the door. The defendant answered. . . .
>
> . . . .
>
> . . . [The police] ran a computer check on Rodney Joseph Gant and found that he was wanted on a suspended driver's license and, also, an outstanding warrant for failure to appear.
>
> . . . .
>
> . . . [The police] left and then came back to the residence, found a man and a woman around the residence. The woman had a crack pipe. The man, they didn't apparently find any contraband on him. Then the defendant arrived, driving a vehicle, and the officer, as the car pulled into the driveway, shined his flashlight into the car, recognized Mr. Gant as the individual he had previously met at the door and identified him as Mr. Gant.

> And as the officer was walking toward the vehicle, Mr. Gant got out of the vehicle and started walking toward the officer when the officer called him by name, and he responded that that was who he was. And the officer took him in custody for the outstanding warrant and suspended driver's license, having seen him operating a motor vehicle. . . . [T]here's no question that [the officer] could legally arrest and did lawfully arrest the defendant on the outstanding warrant and for operating a motor vehicle without a driver's license.
>
> Mr. Gant was removed from the vehicle—from the vicinity of the vehicle to the officer's patrol car and placed in the back of the patrol car, and the officers then did a search of the defendant's vehicle, found a weapon and found the jacket. And, apparently, feeling the jacket, felt something that they felt might be drugs and took it out of the pocket and found cocaine.

¶ 4 Gant's counsel stated that, "if the State concedes those are the facts, I think those are facts sufficient to proceed on the motion." The prosecutor replied: "I have no disagreement with the facts. I'd be happy to submit, also, on my pleading as well." Consequently, the parties did not introduce any evidence at the suppression hearing either in support of or in opposition to Gant's motion.

¶ 5 In his motion to suppress the evidence found in his vehicle, Gant did not contest the lawfulness of his arrest but, rather, argued only that the ensuing warrantless search of his vehicle was illegal because no exceptions to the Fourth Amendment's warrant requirement applied. The state argued that the search was lawful because it had been conducted incident to Gant's arrest or, alternatively, that, because the police had probable cause to search his vehicle, a warrantless search was permissible under the automobile exception to the Fourth Amendment's warrant requirement. The trial court denied Gant's motion, finding that the search of the car was lawful because it was a search incident to his arrest. We disagree.

Warrantless Search Incident to Arrest

¶ 6 In *Chimel v. California,* 395 U.S. 752, 763, 89 S.Ct. 2034, 2040, 23 L.Ed.2d 685, 694 (1969), the Supreme Court held that, when police make a lawful arrest, they may, without a warrant, search the person in custody as well as the "area from within which he might gain possession of a weapon or

destructible evidence." Applying that principle to a situation in which the person arrested had been occupying a vehicle when police initiated contact with him, the Court later held that officers may search the entire passenger compartment of a vehicle, and all containers therein, as a "contemporaneous incident" of a lawful arrest. *New York v. Belton,* 453 U.S. 454, 460, 101 S.Ct. 2860, 2864, 69 L.Ed.2d 768, 775 (1981).[1] This rule, denominated "bright-line" by one of the dissenting justices, *id.* at 463, 101 S.Ct. at 2866, 69 L.Ed.2d at 777, was premised on the generalization, rather than the probability in a given case, that objects within a vehicle's passenger compartment are within an arrestee's reach. Even so, the Court specifically stated that its holding was limited to the "particular and problematic" context in which it had arisen, and did not "alter[ ] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." 453 U.S. at 460 n. 3, 101 S.Ct. at 2864 n. 3, 69 L.Ed.2d at 775 n. 3; *see also State v. Lopez,* 198 Ariz. 420, 10 P.3d 1207 (App.2000).

¶ 7 Taking *Belton* one step further, the Ninth Circuit Court of Appeals held that a vehicle search conducted five minutes after an arrestee had been removed from both the automobile and the scene qualified as a search incident to arrest under *Belton* because the search had "occurred during a continuous series of events closely connected in time to the arrest." *United States v. McLaughlin,* 170 F.3d 889, 891 (9th Cir.1999); *see also United States v. Doward,* 41 F.3d 789 (1st Cir.1994).

¶ 8 The state contends that the question of whether *Belton* applies to Gant's situation "appears to be a matter of first impression in Arizona."[2] We agree and conclude

---

1. In *Belton,* the Court also used the term "recent occupant," which, when read in context, clearly refers to someone who, once arrested and removed from a vehicle, necessarily becomes its "recent occupant." 453 U.S. at 460, 101 S.Ct. at 2864, 69 L.Ed.2d at 775. Some courts have, in our opinion, misconstrued this language to justify extending *Belton's* reach to cases in which a person voluntarily exited a vehicle before the police initiated any contact. *See, e.g., Glasco v. Commonwealth,* 257 Va. 433, 513 S.E.2d 137 (1999).

2. In contrast to that assertion in its brief, at oral argument in this court, the state referred to this as a "run-of-the-mill *Belton* case," citing *State v. Crivellone,* 138 Ariz. 437, 675 P.2d 697 (1983), and *State v. Hanna,* 173 Ariz. 30, 839 P.2d 450 (continued...)

that, not only are *Belton* and *McLaughlin* both factually distinguishable from this case, but also that the rationale underlying those cases does not extend to this situation. We further conclude, therefore, that the warrantless search of Gant's vehicle was not a lawful search incident to his arrest.

¶ 9 In *Belton,* an officer stopped the vehicle in which Belton was a passenger because the officer had seen the vehicle speeding. In *McLaughlin,* an officer stopped the vehicle because it had an illegally tinted rear window. Here, in contrast, the facts as summarized by the trial court do not show, nor can we infer, that Gant was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle. And if, as the state suggested at oral argument in this court, the trial court implicitly drew either inference, we conclude it erred in doing so because neither inference is reasonably suggested by these facts. What is clear from these facts, however, is that Gant voluntarily—that is, not in response to police direction—stopped his vehicle, exited it, and began to walk away from it. We believe that this factual distinction is significant and requires a different result than that in *Belton* and *McLaughlin.*

¶ 10 We agree with the holding of *United States v. Strahan,* 984 F.2d 155 (6th Cir.1993), in which the Sixth Circuit Court of Appeals determined that *Belton* was inapplicable to a situation in which an arrestee had been apprehended approximately thirty feet from his automobile because the police had not initiated contact with him until that time and, therefore, he was not an occupant of the vehicle. The court instead held that the test outlined in *Chimel* applied. We further agree with the reasoning expressed in *United States v. Fafowora,* 865 F.2d 360 (D.C.Cir.1989), in which the court held inapplicable the rationale underlying *Belton's* bright-line rule allowing police to search the entire passenger compartment of a vehicle—that it is, at least hypothetically, within the reach of its arrested occupant—to a case in which the police had first encountered the arrestee outside the automobile. In such cases, the court said, the twin concerns of officer safety and evidence preservation that justify, at least theoretically, the search-incident-to- arrest exception to the warrant requirement discussed in *Chimel* disappear because the vehicle's passenger compartment is

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(...continued)
(App.1992). *Crivellone and Hanna,* however, both involved situations in which officers stopped a suspect's vehicle, which was not the case here. The state's reliance on these cases, therefore, is misplaced.

not available to the arrestee at the time the police encounter or arrest the person. Other courts have expressed similar reasoning and have reached similar results. *Lewis v. United States*, 632 A.2d 383 (D.C.1993); *Thomas v. State*, 761 So.2d 1010 (Fla.1999); *State v. Foster*, 127 Idaho 723, 905 P.2d 1032 (Ct.App.1995); *People v. Stehman*, 324 Ill.App.3d 54, 257 Ill.Dec. 607, 753 N.E.2d 1233 (2001); *Commonwealth v. Santiago*, 410 Mass. 737, 575 N.E.2d 350 (1991); *People v. Fernengel*, 216 Mich.App. 420, 549 N.W.2d 361 (1996).

¶ 11 By its own terms, *Belton* is limited to the particular factual situation in which it arose. Accordingly, it applies only when "the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile)." *United States v. Hudgins*, 52 F.3d 115, 119 (6th Cir.1995); *see also Thomas*. We believe that "the *Belton* objectives and Fourth Amendment principles are best served by limiting *Belton's* " reach in this way. *Foster*, 905 P.2d at 1039.[3] However, we emphasize that, when police attempt to initiate contact by either confronting or signaling confrontation, a vehicle's occupant cannot avoid *Belton's* application and create a haven for contraband simply by exiting the vehicle when officers are seen or approach. If the record shows that police overtly initiated contact before a suspect exits a vehicle and the suspect is subsequently arrested, the vehicle may nonetheless be searched without a warrant incident to an arrest under *Belton*. *See, e.g., United States v. Mans*, 999 F.2d 966 (6th Cir.1993).

¶ 12 The two cases the state asserts "are not meaningfully distinguishable" from this case, *State v. Wanzek*, 598 N.W.2d 811 (N.D.1999), and *People v. Savedra*, 907 P.2d 596 (Colo.1995), can, in fact, be distinguished on this very

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3. We acknowledge that not all courts agree with this construction of *Belton*. *See, e.g., United States v. Sholola*, 124 F.3d 803, 817 (7th Cir.1997) (extending *Belton* to a case in which the defendant was not an occupant but was " 'positively linked' " to the vehicle at the time of his arrest), *quoting United States v. Adams*, 26 F.3d 702, 705 (7th Cir.1994); *United States v. Snook*, 88 F.3d 605 (8th Cir.1996); *United States v. Schecter*, 717 F.2d 864 (3d Cir.1983); *see also Glasco*.

basis. In *Wanzek*, the arresting officer testified that, when he had pulled up next to the defendant in his patrol car, she had "looked over at [him], looked straight ahead, backed the vehicle up, and exited the vehicle." 598 N.W.2d at 813. And, in *Savedra*, the court stated that, because the defendant had been in his vehicle when he "first saw the police officer approach," it was "not unreasonable to assume that he exited the vehicle to avoid contact with the police officer." 907 P.2d at 599-600.

¶ 13 In contrast, the summarized facts here do not show, nor can we infer, that the police attempted to initiate contact with Gant while he was still in his vehicle or that he had attempted to evade contact with the police by exiting his vehicle. Contrary to the state's assertion, we do not believe that, by shining a flashlight into Gant's vehicle, the officer necessarily initiated contact with him. These facts do not show the distance between Gant's vehicle and the officer, either when he shined the flashlight at Gant's car or when the officer approached it after Gant had exited it, or that a person in Gant's position would even have been aware that a light had been shined into the vehicle, much less who had shined it. Nothing shows or suggests that Gant looked in the direction of the light when it was shined or that he had seen officers or any other sign of police activity at the residence, such as flashing emergency lights, marked police vehicles, or uniformed officers, either when he arrived at the residence or before he exited his vehicle. The record is also silent about the lighting in the areas where Gant parked his vehicle, those places where the officers were positioned when he arrived, and the spaces that separated those areas. Additionally, the record does not support a finding that Gant was or should have been aware of anyone's approach as he exited his vehicle.[4] Furthermore, nothing in the record shows that, by shining the light, the officer was attempting to signal his intent to confront Gant. Rather, the officer might simply have

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4. Citing the following statements the trial court made when denying Gant's motion to suppress, the state asserts that the court made implicit factual findings that Gant had been aware of the police presence at the residence and had been only a few steps away from the officer when contact occurred. The court stated: "I don't think [Gant] can limit the scope of the search by vacating the car faster than the officers can get up to the car," and "[t]he fact that Mr. Gant was fast enough or clever enough to get out of the vehicle I don't think limits the officer's ability to search the vehicle." But, nothing in the trial court's factual summary, nor any reasonable inferences therefrom, supports those remarks.

been attempting to ascertain the identity of the vehicle's occupant as he observed the vehicle approach the residence. Lastly, the record does not reflect the time each of these various events consumed nor the time intervals separating them.

¶ 14 It is unfortunate that the record was not based on witnesses' testimony, under both direct and cross-examination but, rather, on the trial court's apparently extemporaneous summary of the facts as it understood them from the materials contained in Gant's motion to suppress and the state's opposition to it. We believe the better practice is to have the facts flow from witness testimony and other admitted evidence or to be stated in a written stipulation of the parties. Indeed, the law favors a stipulation of facts, especially if the stipulation is carefully considered and crafted in advance of a hearing or trial, that would be binding both below and on appeal. *See State v. Sorrell,* 109 Ariz. 171, 506 P.2d 1065 (1973); *Bennett ex rel. Arizona State Personnel Comm'n v. Beard,* 27 Ariz.App. 534, 556 P.2d 1137 (1976). We can only observe that many of the critical facts that bear upon resolution of the contested issues would likely have been addressed had the parties questioned witnesses. We appreciate a trial court's attempt to conserve judicial resources by acknowledging its understanding of the factual background and the parties' relative positions at the outset of a contested matter. But, this does not relieve the party bearing the burden of persuasion, here the state, from ensuring that the record contains adequate information for judicial decision-making at both the trial and appellate levels. *See State v. Rogers,* 186 Ariz. 508, 924 P.2d 1027 (1996) (stressing necessity of making factual record below in order for appellate court to decide fact-intensive issue and base holding on it).

¶ 15 Accordingly, the record before us does not support a finding that the police were attempting to initiate contact with Gant while he was in the vehicle either by confronting him or by signaling an intent to confront him, notwithstanding the officer's shining the flashlight. Therefore, the search of Gant's vehicle was outside the scope of *Belton. See Lewis,* 632 A.2d at 388 ("[A]ppellant had left the vehicle and [had] become a pedestrian before the police officer initiated contact with him; he was not an 'occupant' within the meaning of *Belton.*"). Because the narrow *Belton* exception is inapplicable, the search must satisfy the *Chimel* test to have been a lawful search incident to Gant's arrest. *See Strahan; see also Fafowora.* Because the passenger compartment of his vehicle was not " 'within his immediate control' " at the time of his arrest, *Chimel,* 395 U.S. at 763, 89 S.Ct. at 2040, 23 L.Ed.2d at 694, the search was not

conducted as an incident to his arrest. *Strahan; see also Fafowora.* Because the state failed to meet its burden of proving that the warrantless search of Gant's vehicle was a lawful search incident to his arrest, we must reverse the trial court's denial of his motion to suppress the evidence found in his vehicle unless the search can be justified by another exception to the Fourth Amendment's warrant requirement. *See Valle.*

Probable Cause

¶ 16 Because we can uphold a trial court's ruling on a motion to suppress if the court reached the correct result even though based on an incorrect reason, *State v. Nadler,* 129 Ariz. 19, 628 P.2d 56 (App.1981), we must consider the state's alternative argument that the police were justified in searching Gant's vehicle independent of the search-incident-to- arrest exception. The state asserts that, because Gant was present at a house where narcotics trafficking was suspected to be occurring and where the police had found a person with drug paraphernalia,[5] the police had probable cause to search Gant's vehicle under the automobile exception to the warrant requirement. *See State v. Weinstein,* 190 Ariz. 306, 947 P.2d 880 (App.1997) (police may search vehicle without warrant if vehicle readily mobile and if they have probable cause to believe it contains contraband). That exception, however, is inapplicable here.

¶ 17 The state has not cited any case, nor have we found any, in which the police were found to have probable cause to search a vehicle based on facts such as these. Based on the sparsely developed factual record before us on this issue, we must conclude that the police did not have probable cause to believe that Gant's vehicle contained contraband. Indeed, it would be inappropriate for us to do otherwise. *See Rogers.*

Conclusion

¶ 18 In sum, the state failed to meet its burden of proving the legality of the warrantless search of Gant's vehicle. *See Valle; Rodriguez.* Therefore, the trial court erred in denying Gant's motion to suppress the evidence found in his vehicle. Because of our resolution of this issue, we need not address Gant's remaining argument on appeal. We

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5. In its answering brief, the state cites additional facts that were not included in those summarized by the trial court at the hearing on Gant's suppression motion. Therefore, we do not consider them in our analysis. *See Sanchez.*

(continued...)

(...continued)

reverse Gant's convictions and sentences.

FLOREZ, J., concurs.

PELANDER, Judge, specially concurring.

¶ 19 I concur with the court's opinion but write separately to make several additional observations. Cases such as this are difficult and have produced disparate results around the country primarily because the law relating to warrantless vehicle searches after *Belton* has become so muddled. As Justice Lacy noted in her concurring opinion in *Glasco v. Commonwealth,* 257 Va. 433, 513 S.E.2d 137, 142 (1999) (Lacy, J., concurring):

> [N]othing in *Belton* specifically defined what circumstances qualified an arrestee as a "recent occupant." Consequently, from its inception, application of the so-called "bright line" *Belton* rule has not provided clear resolution of search issues in cases with facts that do not mirror the facts in *Belton* or the precise words of the rule.

¶ 20 The *Belton* rule was premised, at least theoretically, on concerns for officer safety and evidence preservation. *See New York v. Belton,* 453 U.S. 454, 457, 101 S.Ct. 2860, 2862, 69 L.Ed.2d 768, 773 (1981); *State v. Hanna,* 173 Ariz. 30, 32, 839 P.2d 450, 452 (App.1992). As routinely applied, however, the rule "may be invoked regardless of whether the arresting officer has an actual concern for safety or evidence." *United States v. McLaughlin,* 170 F.3d 889, 891 (9th Cir.1999). *See also Hanna; State v. Wanzek,* 598 N.W.2d 811 (N.D.1999); *Glasco.* As Judge Trott aptly noted in his concurring opinion in *McLaughlin:* "In our application of *Belton's* 'bright-line' [rule] . . . the rationales behind the search incident to arrest exception have been abandoned, the purpose has been lost, and, as Chief Justice Rehnquist predicted, little certainty remains." 170 F.3d at 894 (Trott, J., concurring).

¶ 21 "The purposes behind *Belton* were two-fold: to create a single familiar standard to guide police officers in automobile searches and to eliminate the need for litigation in every case to determine whether the passenger compartment of the vehicle is within the scope of a search incident to arrest." *Wanzek,* 598 N.W.2d at 815. *See also Belton,* 453 U.S. at 458-60, 101 S.Ct. at 2863-64, 69 L.Ed.2d at 774-75; *Glasco.* 513 S.E.2d at 141. Based on the varying results of cases decided in the twenty years following *Belton,* it is questionable whether those purposes have been achieved. And, I have some concerns that our ruling

today, although correct on the very sparse, undeveloped record before us, may frustrate those purposes and incorporate unintended nuances into this already complicated Fourth Amendment arena. As the state points out, the fine lines that courts may have to draw in this area are problematic:

> [W]ould a suspect who has one foot in the vehicle and one on the ground be deemed "in" or "out" for purposes of *Belton?* Would that depend on whether some part of his body was still touching the seat? What if he had both feet on the ground but the door is still open and he's leaning into the passenger compartment—or just reaching in? What if he's sitting on the tailgate of a station wagon but his feet are touching the ground—could he merely stand up to render *Belton* inapplicable? What if the suspect is standing outside the vehicle but has left the engine running? . . . [C]ould the initial contact [by police] be non-verbal, such as a signal by hand, whistle, or flashlight? Or, because an actual-occupancy concept necessarily depends on the suspect's precise physical location at the time of contact, would the initial contact have to involve at least the officer's present ability to make immediate physical contact? Under such a rule, given the endless variations in the facts that Fourth Amendment issues inevitably engender, suppression hearings on *Belton* searches could become extended mini-trials on factual minutiae, and the actions of police officers in the field would have no predictable legal consequences in the courtroom.

¶ 22 Regardless of whether those issues and concerns may be legitimate, this case does not raise any of them. Fourth Amendment determinations typically involve fact-intensive inquiries and, inevitably, line-drawing. And resolution of any such issues, of course, depends on analysis of specific facts actually presented in a particular case. Based on the record here, the state simply did not carry its burden of establishing the legality of the warrantless search of Gant's vehicle.

¶ 23 Nonetheless, I agree with the state's protest that "police should not have to run a footrace to implement *Belton.*" *See Wanzek,* 598 N.W.2d at 815 ("Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search."); *Thomas v. State,* 761 So.2d 1010, 1014 (Fla.1999) ("[T]he arrest and subsequent search should not be

invalidated merely because the defendant is outside the automobile. The occupants of a vehicle cannot avoid the consequences of *Belton* merely by stepping outside of the vehicle as the officers approach."). Indeed, our opinion expressly emphasizes that point. *See* ¶ 11, *supra.* I further note that we do not limit *Belton's* reach to cases in which police first initiate or attempt to initiate contact with the arrestee when he or she is in a *moving,* as opposed to a parked or otherwise stationary, vehicle.

¶ 24 Despite my concerns about the state of the law in this area, affirming the trial court's ruling here essentially would not only overlook, but also tacitly approve of the significant factual deficiencies in the record; minimize the state's burden of establishing the legality of this warrantless search; disregard the Supreme Court's cautionary note in *Belton* that it was "in no way alter[ing] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests," 453 U.S. at 460 n. 3, 101 S.Ct. at 2864 n. 3, 69 L.Ed.2d at 775 n. 3; and stretch the concept of "recent occupant" beyond *Belton's* intended, contextual meaning. *See Glasco,* 513 S.E.2d at 144 (Lacy, J., concurring) (noting that in all but one case cited in *Belton* on this point, "the arrestee was arrested while in the vehicle, and in all the cases the search of the vehicle occurred after the arrestees exited the vehicles at the direction of the police and while they were still within close proximity of the vehicles"). Accordingly, I concur that the trial court erred in denying Gant's motion to suppress.

APPENDIX B

Supreme Court

NOEL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 Arizona State Courts Building.
1501 West Washington
Phoenix, Arizona 85007-3329

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 26, 2002

RE: STATE OF ARIZONA vs RODNEY JOSEPH GANT
Arizona Supreme Court No. CR-02-0164-PR
Court of Appeals Division Two No. 2 CA-CR 00-0430
Pima County Superior Court No. CR-20000042

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 24, 2002, in regard to the above-referenced cause:

ORDERED: The State of Arizona's Petition for Review by the Supreme Court = denied.

Record returned to the Court of Appeals, Division Two, Tucson, this 26th day of September, 2002.

Noel K. Dessaint, Clerk

TO:
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Eric J Olsson, Arizona Assistant Attorney General, Tucson Office
Thomas F Jacobs
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West Publishing Company
Lexis-Nexis

ph

No. 02-1019

MAR 7 2003

IN THE
SUPREME COURT OF THE UNITED STATES
- October Term, 2002

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF IN OPPOSITION

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No. 02-1019

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Attorney for Respondent
Mr. Rodney Joseph Gant

QUESTION PRESENTED FOR REVIEW

When the police first initiate contact with a defendant after the defendant no longer controls or occupies his vehicle, and the defendant is subsequently arrested, does the U.S. Supreme Court's holding in *New York v. Belton* apply, allowing a full search of the vehicle incident to arrest, or is the search limited by the U.S. Supreme Court's holding *in Chimel v. California*, allowing only a search of the defendant himself and his immediate area?

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OPINION BELOW

The Arizona State Court of Appeals' opinion that is the subject of the present Petition for Writ of Certiorari is reported as *State v. Gant*, 202 Ariz. 240, 43 P.2d 188 (Ariz.App. 2002). The order of the Arizona Supreme Court denying review of *State v. Gant* is not reported, yet is attached as Appendix B of the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Division Two of the Arizona Court of Appeals entered the judgment from which relief is sought on March 29, 2002. *State v. Gant*, 202 Ariz. 240, 43 P.2d 188 (Ariz.App. 2002). The Arizona Supreme Court thereafter issued its order denying review without comment on September 26, 2002. *See* Appendix B of Petition for Writ of Certiorari.

Respondent agrees that: 1) Petitioner timely filed their Petition for Writ of Certiorari within ninety days of the order denying review; 2) the lower court decision in issue presents both a question of federal constitutional law and a live case or controversy; and 3) Petitioner has exhausted its remedies at the state level. However, Respondent respectfully submits that the United States Supreme Court should deny the Petition for Writ of Certiorari in this matter because: 1) the Arizona Court of Appeals did not err in its decision; and 2) there is insufficient conflict among the federal circuits and state courts to warrant or justify review.

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment is applicable to all states through the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

"Section 1. No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Arizona courts, together with many other federal and state jurisdictions, have properly applied the United States Supreme Court's holdings in *New York v. Belton*, 453 U.S. 454 (1981), and *California v. Chimel*, 395 U.S. 752 (1969), by upholding the historical rationales underlying the "search incident to arrest" exception to the warrant requirement originally fully set forth by Chief Justice Rehnquist in *United States v. Robinson*, 414 U.S. 218 (1973), and recently confirmed in *Knowles v. Iowa*, 525 U.S. 120 (1998): (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. In properly interpreting the "recent occupant" language of the *Chimel/Belton* bright line rule allowing searches of automobiles following a custodial arrest to require police to have initiated contact while a defendant was the "occupant" of the vehicle to be searched, these courts have properly applied consistent United States Supreme Court authority in the area of search and seizure and safeguarded both the Fourth Amendment warrant requirement for searches, as well as the integrity of the historical rationales of the "search incident to arrest" exception to the 4th Amendment warrant requirement. To extend the present bright-line rule to include searches of all automobiles "occupied" prior to any police contact would ignore consistent Supreme Court precedent, substantially abrogate the Fourth Amendment itself as applied to automobiles in general and disregard both the historical rationales for the "search incident to arrest" exception and make obsolete or unnecessary the independent probable cause related "automobile exception" to the warrant requirement enunciated in *Chambers v. Maroney*, 399 U.S. 42 (1970).

A. MATERIAL FACTS.

Respondent presents the following facts from the stipulated appellate record controverting the State's factual background at page 4 of their Petition for Writ of Certiorari.

Investigating officers had come to the same residential location where Respondent's arrest took place earlier the same day after receiving a report of possible narcotics activity. *Gant*, 43 P3d, at 190, Para. 3. At that time, the officers first had contact with Respondent Rodney J. Gant when he answered the door of the house. *Id.* During the first contact with Respondent, not later, the investigating officers discovered that he had a suspended driver's license and an outstanding warrant for a misdemeanor Failure to Appear, yet did not arrest him. *Id.*

Later that evening, after the investigating officers had returned to the residence in an attempt to contact the resident of the house, Respondent drove up to the residence and parked his vehicle in the driveway. *Id.* Respondent did not start walking toward the officer after getting out of his car, yet began walking toward the back door of the house when he was called over by the investigating officer who had identified Respondent as the individual he had previously met at the residence. *Id.* The officer then arrested Respondent for Driving on a Suspended License and the misdemeanor warrant, secured him in the back seat of his patrol vehicle, searched his vehicle, and discovered drug related contraband (a weapon and cocaine) providing the basis for felony drug charges. *Id.* at p. 188, Para. 1; p. 190, Para 3.

B. PROCEEDINGS BELOW

Respondent appealed the trial court's denial of his motion to suppress the contraband after the lower court held that the search of his vehicle was reasonable as a search incident to his arrest. *Id.* at p. 191, Para. 5. The Arizona Court of Appeals reversed, holding that the search of Respondent's vehicle was illegal because *Chimel* rather than *Belton* applied to the subject "search incident to arrest" because Respondent had "voluntarily—that is, not in response to police [contact or] direction—stopped his vehicle, got out, exited it and began to walk away from it." *Id.* at p. 193, Para. 9. The Appellate Court further held that historical rationales underlying the *Belton* bright line rule allowing an automobile "search incident to arrest" did not apply to the stipulated facts of the present case, and that under such facts, the search incident to arrest rule enunciated in *Chimel* applied. *Id.* at pp. 192-94, Para. 8-11. The Appellate Court finally concluded that the search could not be justified under the automobile exception to the warrant requirement because no probable cause existed for a search related to drug activity. *Id.* at p. 196, Para. 16.

Thereafter, Petitioner sought review by the Arizona Supreme Court arguing that this most honored Court had held in *New York v. Belton* that police officers may, *carte blanche*, search the vehicles of all criminal defendants recently occupied thereby, whether said defendants had voluntarily left their vehicle prior to police contact or had departed their vehicle either following police contact or at police direction. The Arizona Supreme Court subsequently denied review without comment, implicitly affirming the decision of the Arizona Court of Appeals. (Petition for Writ of Certiorari, Appendix B)

REASONS TO DENY THE PETITION

A. SUMMARY OF THE ARGUMENT.

Under the United States Supreme Court's holding in *New York v. Belton*, before a search incident to arrest of a defendant's vehicle may be conducted, the defendant must have occupied or controlled the vehicle in issue at the time law enforcement initiated contact. The Arizona Court of Appeals properly held in *State v. Gant* that a *Belton* "search incident to arrest" was inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact. In doing so, the Arizona courts, together with many other federal and state jurisdictions, have properly applied the holdings in *New York v. Belton*, 453 U.S. 454 (1981), and *Chimel v. California*, 395 U.S. 752 (1969), by upholding the two historical rationales underlying the "search incident to arrest" exception to the warrant requirement originally fully set forth by Chief Justice Rehnquist in *United States v. Robinson*, 414 U.S. 218, 223-36 (1973), and recently confirmed by the Chief Justice in *Knowles v. Iowa*, 525 U.S. 113, 116-119 (1998): (1) the need to disarm the suspect in order to take him into custody and prevent his escape, and (2) the need to locate and preserve evidence for later use at trial regarding the underlying crime. In properly interpreting the "recent occupant" language of the *Belton* bright-line rule allowing searches of automobiles following a custodial arrest to require police to have initiated contact with the arrestee while occupying or controlling the vehicle to be searched, these courts have properly applied consistent United States Supreme Court authority in the area of search & seizure law and safeguarded both the Fourth Amendment warrant requirement for searches, as well as the

integrity of the historical rationales of the "search incident to arrest" exception to the warrant requirement repeatedly enunciated by this most honored Court.

Should this great Court grant review in this case, it should affirm the *Gant* decision and not extend the present *Chimel/Belton* bright-line rule to include searches of *all* automobiles "occupied" prior to *any* police contact. Such a holding would ignore consistent Supreme Court precedent, substantially abrogate Fourth Amendment protections related to automobiles in general, and disregard both the historical rationales for the "search incident to arrest" exception itself and the ongoing viability of the independent "automobile exception" to the warrant requirement.

B. ARGUMENT: NOTWITHSTANDING ARGUABLE CONFLICTS AMONG FEDERAL AND STATE COURTS ON THE SUBJECT, THE *GANT* COURT DID NOT ERR BECAUSE IT PROPERLY APPLIED U.S. SUPREME COURT PRECEDENT REGARDING THE "SEARCH INCIDENT TO ARREST" EXCEPTION TO THE 4TH AMENDMENT WARRANT REQUIREMENT.

In *New York v. Belton* the United State Supreme Court applied the *Chimel* "search incident to arrest" exception to the 4th Amendment warrant requirement to custodial arrests of "occupants" of automobiles. *Ibid.*, 453 U.S. 454, 460 (1981). It is both the fact of a lawful arrest, as well as the existing concerns for both officer safety and the preservation of evidence which triggers this exception to the 4th Amendment warrant requirement. *Chimel,* 395 U.S. 752, 763 (1969), *Robinson*, 414 U.S. 218, 235 (1973), and *Knowles v. Iowa*, 525 U.S. 113, 116-119 . Although *Robinson* established a bright-line rule for "searches incident to arrest" and *Belton* extended the same rule to arrests of "occupants" of automobiles, *Belton* did not abrogate 4th Amendment protections, if an automobile is somehow merely spatially or temporally connected with the arrest, nor did

it allow, *carte blanche*, a search of such automobiles when not actually occupied or controlled by the arrestee at the time of initial police contact.

In *Gant*, the Arizona Court of Appeals properly applied the "occupancy" requirement of *Belton* in light of other United States Supreme Court precedent in *Chimel*, *Robinson* and *Knowles*, holding that given the limiting language of *Belton* itself, and the historical rationales of safety and preservation of evidence underlying the "search incident to arrest" exception, that it was improper to extend the *Belton* bright-line rule to situations in which the occupant of a vehicle who is subsequently arrested has voluntarily left the vehicle prior to actual police contact or contact being initiated. In holding that *Belton* does not apply when police initiate contact *after* a defendant has voluntarily exited their vehicle, the appellate court properly applied existing and current United States Supreme Court precedent which continue to stress the importance of the historical rationales of officer safety and preservation of evidence and their foundational relationship with the "search incident to arrest" exception. In doing so, the *Gant* court kept the *Chimel/Belton* "search incident to arrest" exception from being improperly extended to "spatio-temporal situations" that would merely muddle "bright-line" waters of present law as applied to searches and seizures, creating additional and unnecessary litigation to ferret out when such a "spatio-temporal" rule may or may not be applied.

1. THE ARIZONA COURT OF APPEALS CORRECTLY APPLIED UNITED STATES SUPREME COURT PRECEDENT IN *WASHINGTON*, *CHIMEL*, *BELTON* AND *KNOWLES*.

The seminal case dealing with a search incident to arrest was *Chimel v. California*. In *Chimel*, the United States Supreme Court established the rule that a warrant is not necessary to conduct a search of an arrested individual including the "grab

area" from which an arrestee might gain possession of a weapon or destructible evidence, so long as it occurs relatively contemporaneously to the arrest. *Id.*, 395 U.S. 752, 762-63, 89 S.Ct. 2034, 2039-2040 (1969). Thereafter, in *United States v. Robinson*, the Supreme Court established the "search incident to arrest" exception as a "bright-line" rule and greatly explained the historical rationales underlying the exception to the warrant requirement, stating that they were two-fold: 1) officer safety and 2) preservation of evidence. *Id.*, 414 U.S. 218, 224-35, *Knowles* at 117. In discussing the historical development of the exception itself, the Supreme Court plainly reaffirmed and restated its holding in *Chimel* in stating:

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter may use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. *Robinson*, 414 U.S. at 226 citing *Chimel*, at 149.

The particular rule with respect to the search of vehicles incident to arrest was set out in *N.Y. v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981), in which the U.S. Supreme Court extended the *Chimel* search incident to arrest to automobile scenarios in which the arrestee is the "occupant" or "recent occupant" of an automobile following a traffic stop concluding that the passenger compartment of the vehicle was the "grab area" defined previously by the Supreme Court in *Chimel*. *Ibid.* at 460. Moreover, in *Belton* the Supreme Court stated:

> "Our holding today does no more than determine the meaning of *Chimel*'s principles in this particular and problematic content. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrest." *Belton.* at 460, n. 3.

The Supreme Court thereafter stated that under prevailing fundamental principles of constitutional search and seizure, in order for a search incident to arrest to be reasonable as opposed to merely exploratory, it must be grounded in at least one of the rationales for which the exception was created: officer safety or the preservation of evidence. *Id.* at 460, *Chimel*, 395 U.S. at 768.

In recent years, the Supreme Court has reaffirmed the historical rationales of officer safety and preservation of evidence as providing the basis for the exception itself in refusing to extend the *Belton* search incident to arrest exception to traffic citation cases where, although police make contact with an individual while occupying their vehicle, no actual custodial arrest takes place and the dual concerns for officer safety and preservation of evidence are either lessened by the circumstances of the police stop/detention or totally inapplicable. *Knowles v. Iowa*, 525 U.S. 113, 114-117 (Rationale of officer safety and preservation is greatly lessened in traffic citation detention as compared to custodial arrest situation, while preservation of evidence rationale is non-existent because proof of traffic violation already established without need of further evidence from vehicle search).

In the present case, the search of Respondent's vehicle was obviously exploratory in nature, intended to circumvent the need for a search warrant, and was not reasonable because it was not grounded in at least one of the rationales for which the exception was created: officer safety or the preservation of evidence. *Belton.* at 460, *Chimel* at 768, and *Knowles* at 114-17.

At the time the initial police contact, Respondent had already departed from his vehicle and was walking away from it. He immediately walked towards the investigating

officer when called and was arrested. Under circumstances that included defendant voluntarily departing his vehicle prior to police contact, walking even further away from the vehicle to his own arrest and being secured in the back of a police car at the time of the actual search, the officer safety rationale required could not reasonably have existed.

Further, here, just as in *Knowles*, the destruction of evidence rationale did not exist, because the proof of Respondent's driving on a suspended license and/or failure to appear had been previously established by the police earlier in the day and with Respondent driving of the vehicle. The police were not looking for a specific vehicle related to suspected drug activity, yet obviously wanted the opportunity to search Respondent's vehicle without satisfying the 4th Amendment warrant requirement. Additional evidence could not and was not yielded from the search of the incidental vehicle supporting the initial arrest charges. Therefore, since neither rationale existed in the *Gant* case, the search in issue was unreasonable and violative of the 4th Amendment. *Belton.* at 460, *Chimel* at 768, and *Knowles* at 114-17.

Based upon the foregoing, the *Gant* decision should be affirmed.

2. CONFLICTING OPINIONS AMONG THE FEDERAL CIRCUITS AND STATE COURTS ARE GENERALLY DISTINGUISHABLE ON THEIR OWN FACTS OR WRONGLY DECIDED UNDER *BELTON* AND APPLICABLE SUPREME COURT PRECEDENT. IN CONTRAST, THE *GANT* OPINION IS FIRMLY GROUNDED IN APPLICABLE LAW, UNLIKE PETITIONER'S "SPATIO-TEMPORAL" TEST.

Petitioner suggests that there is a great conflict among both federal and state courts regarding the application of the *Belton* rule in cases similar to the facts of this case. However, these cases[1] are either generally distinguishable on their own facts, or they

conflict in their interpretation of the *Belton* required "occupant" status necessary for a automobile related "search incident to arrest". Although the State alleges that the Arizona Court of Appeals in *Gant* relied heavily upon the *Hudgins* case, in actuality the lower appellate court relied particularly upon U.S. Supreme Court precedent in *Chimel & Belton*. However, Petitioner's proposed "spatio-temporal" bright-line rule is not grounded in applicable law.

a. Conflicting Opinions Among Federal Circuit and State Courts

Conflicting opinions among federal circuit and state courts distinguishable on their own facts or improperly apply the *Chimel/Belton* bright-line rule.

Among the federal circuits, both the 6th Circuit Court of Appeals and the D.C. Circuit Court of Appeals have properly interpreted the *Chimel/Belton* bright-line rule as requiring actual occupancy or control of the vehicle to be searched at the time police actually initiate contact in keeping with the historical rationales of officer safety and evidence preservation. *U.S. v. Strahan*, 984 F.3d 155, 159 (6th Cir. 1993), *U.S. V. Hudgins*, 52 F.3d 115, 118-120 (6thCir. 1995), *U.S. v. Fafowora*, 865 F2d 360, 362 (D.C.Cir. 1989). Such an interpretation is true to both the limiting language of *Belton* itself, as well as to the historical rationales for the rule as outlined and confirmed by the U.S. Supreme Court in *Robinson* and *Knowles*: officer safety and preservation of evidence. *Supra*.

On the other hand, the cases favorably cited by the Petitioner as the basis for expanding the *Chimel/Belton* bright-line rule may be distinguished both factually or in their misapplication of present law.

For example, in *Snook*, the 8th Circuit confirmed the legality of the search of that defendant's vehicle under *Belton's* "recent occupant" language under circumstances that included the following facts: 1) that at the time of the arrest, the vehicles' engine was still running, 2) the arresting officer found the contraband in plain view when he reached in to the vehicle to turn it off and 3) the defendant was arrested next to his running vehicle. *Id.*, 88 F.3d 605, 606-08 (8th Cir. 1994). Also, in *Franco*, the 10th Circuit similarly confirmed the validity of the search of the Franco vehicle under *Belton's* "recent occupant" language because the defendant in that case was traveling back and forth between his own car and the adjacent undercover police vehicle at the time of his arrest. *Id.*, 981 F2d 470, 472 (10th Cir. 1992). *U.S. v. Arango* involved a defendant who, after being *contacted* by police, immediately fled his vehicle and was arrested a block away from the vehicle. *Id.*, 879 F.2d 1501, 1506-07 (10th Cir. 1985).

Other cases cited by Petitioner either espousing a "spatio-temporal" or "positive" association with the vehicle searched are not true to the historical rationale underlying the "search incident to arrest" rule and push the once clear bright-line "occupancy" rule to the breaking point, where the historical rational underlying the exception itself are not even considered in an apparent effort to validate an illegal vehicle search.

b. The *Gant* Decision was Based Upon the Proper Definition of "Recent Occupancy" in Light of U.S. Supreme Court Precedent and Cases Properly Applying Both *Belton* and the Required Historical Rationale in Their Analysis.

Petitioner incorrectly claims that the Arizona Court of Appeals decision in *Gant* has created a test for occupancy that turns on an arrestee's state of mind. (Petition for Certiorari at p. 13-15.) However, the *Gant* opinion is based upon a simple test first

established by this most revered Court in *Belton*: Was the defendant inside the vehicle at the time of the initial contact or detention by police? *Id.* at 460. Further, this simple test was principally based upon the *Gant* court's analysis of existing U.S. Supreme Court precedent in both *Chimel* and *Belton*, as well as a detailed analysis of federal circuit cases that have properly considered the historical rationales of officer safety and preservation of evidence in their decisions. *Gant*, 43 P.2d at 191-93, Paras. 4-11. In sharp contrast, both the federal and state cases that Petitioner relies on or cited supporting its position have either improperly expanded the "recent occupant" requirement of *Belton* or abandoned the underlying historical rationales for the "search incident to arrest" and the "grab area" corollary altogether. Such an expansion or abandonment is in direct contravention of U.S. Supreme Court authority in *Chimel*, *Robinson*, *Belton* and *Knowles*.

c. A Spatio-Temporal Expansion of the *Chimel/Belton* Bright-line Rule Would Ignore the Foundational Rationale Upon Which the Rule is Based and Create Problems in Both Interpretation and Application.

Petitioner requests that this most respected Court resolve the conflict between those federal and state courts strictly interpreting the "recent occupant" requirement of *Belton* and those courts broadly interpreting the term by adopting a "bright-line spatio-temporal test". (Petition for Certiorari at pp. 13-17.) This test that would abandon the "grab area" enunciated in both *Chimel* and *Belton*, which was properly tied to the historical rationales of officer safety and evidence preservation, and allow searches of all automobiles that: 1) are either in some undefined proximity to the defendant at the time of his arrest or 2) were occupied, yet departed by the defendant prior to police even initiating contact. Such a test would obviously abandon the historical rationale of officer

safety and evidence preservation and "give law enforcement officials the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects near their [vehicle], rather than elsewhere. *Chimel* at 767. Obviously, if probable cause exists to search a vehicle, a valid search under the "automobile exception" could be performed. *Chambers v. Maroney*, 399 U.S. 42 (1970).

Further, such an expansion would controvert the facts and legal principles of *Chimel*, in which the United States Supreme Court held that the search of that defendant's three room house, workshop, attic and garage (which area was in close physical and temporal proximity to his arrest in one room of the house) was unreasonable because it was "far beyond the...area from within which he might have obtained either a weapon or something that could have been used as evidence against him". *Id.* at 754, 764-68. Here, the proposed "spatio-temporal" test would do the same and make the "automobile exception" unnecessary or obsolete, fatally compromising the tenets of 4th Amendment itself.

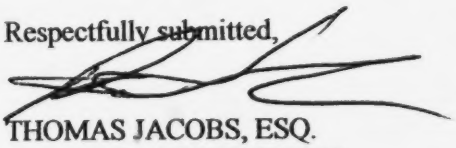
Finally, adopting the "spatio-temporal" bright-line rule proposed by Petitioner would have adverse effects on the judicial system and precious judicial resources. Although law enforcement may greatly benefit from being able to "search at will" any vehicle somehow related to a particular defendant, the cost would be the abrogation of fundamental constitutional rights. Moreover, the judicial system would bear the burden of additional evidentiary hearings generated by such a rule to determine whether the "spatio-temporal" rule applies in a given case. For example, just how close in space or time would a particular defendant have to be to allow or disallow the search of a defendant's vehicle? On the other hand, the present *Belton* rule is simple and easy to

administer. If a defendant "occupies" a vehicle at the time police initiate contact, the vehicle compartment may be searched incident to arrest. If a defendant has departed the vehicle prior to such contact, the defendant himself may be searched under *Chimel*, as well as the "grab area" at which such an arrest takes place. If probable cause exists to believe that the vehicle contained contraband, the "automobile exception" would apply and a subsequent search would be legal, protecting the interests of law enforcement.

CONCLUSION

Based upon the foregoing facts, authorities and legal arguments, Respondent respectfully requests that this most honored Court deny the Petition for Writ of Certiorari, or alternatively, affirm the Court of Appeals decision in *Arizona v. Gant*.

Respectfully submitted,



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Supreme Court, U.S.
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No. 02–1019

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

STATE OF ARIZONA,
PETITIONER,

-vs-

RODNEY JOSEPH GANT,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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12 P

QUESTION PRESENTED FOR REVIEW

When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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STATEMENT OF JURISDICTION

This Court has docketed the State's Petition for Writ of Certiorari, and Respondent has filed a Brief in Opposition. Pursuant to Rule 15(6), Rules of the Supreme Court, Petitioner hereby submits the State's Reply.

REPLY TO THE BRIEF IN OPPOSITION

A. SUMMARY OF THE ARGUMENT.

Contrary to Respondent's assertions, his proffered test for the applicability of *New York v. Belton*[1] based on whether the suspect actually occupied the vehicle when first contacted by the police would not be "simple," or "easy to apply." Indeed, such a test would be unworkable—fraught with potential problems that are acknowledged, in part, in the concurring opinion below.[2] The appropriate inquiry under *Belton* is not whether the suspect "departed" the vehicle before the arrest or initial police contact, but whether the suspect was a recent occupant of the vehicle at the time of arrest.

Moreover, although Respondent points out that *Belton* is premised upon the "immediate area of control" concept espoused in *Chimel v. California*,[3] regarding a search incident to a suspect's arrest in his residence, *Belton*'s bright-line rule departs from *Chimel* in one fundamental aspect unique to vehicle searches: a *Belton* search may be undertaken after the arrestee is deprived of access to the "immediate area of control," i.e., the vehicle's passenger compartment. Thus, in contrast to *Chimel*'s narrower boundaries, *Belton*'s scope includes the arrestee's *recent* immediate area of control, established objectively by the arrestee's recent occupancy of the vehicle. *Chimel* does not circumscribe *Belton*.

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1. 453 U.S. 454 (1981).

2. *State v. Gant*, 202 Ariz. 240, ¶21, 43 P.3d 188 (App. 2002) (Pelander, J., concurring).

3. 395 U.S. 752 (1969).

B. ARGUMENT.

1. An "actual occupancy" test is unworkable.

Respondent urges this Court to adopt a test that he deems "simple and easy to administer": "If a defendant 'occupies' a vehicle at the time police initiate contact, the vehicle compartment may be searched incident to arrest." (Brief in Opposition, at 16–17.) But even one of the authors of *Gant* acknowledged the problems inherent in any actual-occupancy-at-the-time-of-contact approach. Quoting from the State's brief on direct appeal, Judge Pelander's concurring opinion provides a lengthy but far from exhaustive list:

> [T]he fine lines that courts may have to draw in this area are problematic:
>
> > [W]ould a suspect who has one foot in the vehicle and one on the ground be deemed "in" or "out" for purposes of *Belton?* Would that depend on whether some part of his body was still touching the seat? What if he had both feet on the ground but the door is still open and he's leaning into the passenger compartment—or just reaching in? What if he's sitting on the tailgate of a station wagon but his feet are touching the ground—could he merely stand up to render *Belton* inapplicable? What if the suspect is standing outside the vehicle but has left the engine running? . . . [C]ould the initial contact [by police] be non-verbal, such as a signal by hand, whistle, or flashlight? Or, because an actual-occupancy concept necessarily depends on the suspect's precise physical location at the time of contact, would the initial contact have to involve at least the officer's present ability to make immediate physical contact? Under such a rule, given the endless variations in the facts that

> Fourth Amendment issues inevitably engender, suppression hearings on *Belton* searches could become extended mini-trials on factual minutiae, and the actions of police officers in the field would have no predictable legal consequences in the courtroom.

Gant, at ¶ 20 (Pelander, J., concurring).

Respondent's proffered test of actual occupancy at the time of initial contact is unworkable. Instead, this Court should implement an objective assessment of *recent* occupancy, which in most cases would avoid the foregoing questions and the hair-splitting litigation that they would spawn.

No test promises litigation-free implementation, but a recent-occupancy test affords major advantages over requiring actual occupancy at the time of initial contact. First, as fully argued in the Petition, a recent-occupancy test focuses on factors amenable to objective measurement rather than attempting to ascertain, retrospectively, the suspect's actual or constructive awareness of the police before alighting from the vehicle. Second, because a recent occupancy test focuses primarily on the objective measurement of time and distance, the "problematic" "fine lines" listed above would not have to be drawn, absent a dispute as to whether the arrestee ever occupied the vehicle.

Because recent occupancy is an objective continuum of time, space, and movement, future decisions will determine the outer limits of spatio-temporal proximity to the vehicle, a question not presented here, where recent occupancy is an uncontested fact. Unlike an actual occupancy test, which unnecessarily burdens litigants and courts with attempting to determine the suspect's status at a precise moment in time (the initial police contact or attempt to contact), recent occupancy is much more amenable to a totality of the circumstances analysis, i.e., the arrestee's spatio-temporal association with the vehicle.

Respondent's arguments in favor of a rule requiring actual occupancy at the time of arrest or initial police contact are

unavailing. Recent occupancy is the only viable test for applying *Belton*.

2. **Belton**, *a marked departure from* **Chimel**, *is not circumscribed by* **Chimel**'*s present-exigency rationale.*

Respondent contends that *Chimel* limits *Belton*, but he is mistaken because *Chimel* did not involve a motor vehicle. In *Chimel*, the defendant was arrested in his own house, pursuant to an arrest warrant, and the police then searched the entire dwelling incident to the arrest. 395 U.S. at 754. This Court held the residential search illegal because:

> The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area.

Id. at 768. The holding was premised on exigencies that exist at the moment of arrest, e.g., officer safety while effecting the arrest, preventing escape, and keeping the arrestee from destroying evidence in the immediate area. *See id.* at 763–66. Regarding, in particular, searches of a person's abode incident to arrest, the *Chimel* Court declared that it could not envision "any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items":

> [T]he only reasoned distinction [between permissible and illegal warrantless home searches incident to arrest] is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other."

Id. at 766–67.

But *Chimel* did not involve a motor vehicle. In *Chimel*, this Court summarily rejected the idea that a man's house could be searched incident to his arrest if he were no longer inside the dwelling,[4] but in *Belton*, 12 years later, this Court upheld just such a search involving a motor vehicle. *Belton* reached a fundamentally different result on facts which, in *Chimel*, would not have supported a home search, because the search at issue in *Belton* was conducted *after* the arrestee had been removed from "the area within his reach," i.e., the vehicle's passenger compartment:

> [Belton's] jacket was located inside the passenger compartment of the car in which [Belton] *had been* a passenger just before he was arrested. The jacket was *thus* within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case.

453 U.S. at 462 (emphasis added). *Belton*'s reference to *Chimel* in that paragraph is a qualified one, because *Belton*'s holding did not strictly adhere to *Chimel*'s narrow parameters. Instead, *Belton* fashioned a unique rule for automobile searches incident to arrest —a rule that goes beyond *Chimel*'s seemingly absolute proscription against searching outside the area from which the arrestee might *presently* obtain a weapon or destroy evidence. Because the arrestee in *Belton* had already been secured outside the vehicle when the search occurred, the holding in *Belton* necessarily means that, for purposes of vehicle searches incident to an occupant's arrest, the area of control is the area of the arrestee's *recent*, but "not inevitably," *present* control. 453 U.S. at 460.

Fourth Amendment questions involving motor vehicles are unique, as this Court has repeatedly held in other contexts. *See*

---

4. 395 U.S. at 765.

California v. Carney, 471 U.S. 386, 390–92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles). Also, unlike an arrest effected in a suspect's dwelling, when police arrest a vehicle's occupant they cannot practicably or safely control the situation from inside the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (ordering driver out of the car during traffic stop is justified by officer safety concerns and de minimis intrusion); *see Michigan v. Long*, 463 U.S. 1032, 1049–50 (1983) (officers who have detained but not arrested a driver who may be dangerous may search vehicle's passenger area where a weapon might be hidden).

Chimel's "grab area" rule, as Respondent describes it, may control, without more, in other circumstances, but not when a motor vehicle is involved. *Belton* departed from *Chimel* by extending the scope of vehicle searches incident to arrest from the arrestee's *immediate* "grab area" to the arrestee's *recent* "grab area" as well. Thus, to determine whether *Belton* applies, the only viable test consistent with that expanded scope is whether the arrestee is a recent occupant of the vehicle.

Finally, contrary to Respondent's assertions, the State of Arizona does not advocate "'search[ing] at will' any vehicle somehow related to a particular defendant." (Brief in Opposition, at 16.) Reasonableness is always the key to balancing individual rights against the need for effective law enforcement. Petitioner simply urges this Court to adopt the test that is the most objective, easiest to implement, and most likely to achieve that balance: recent occupancy of the vehicle at the time of arrest.

CONCLUSION

Based on the foregoing authorities and arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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Attorney General

RANDALL M. HOWE
Chief Counsel
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Supreme Court, U.S.
FILED
JUL 2 2003
OFFICE OF THE CLERK

No. 02-1019

In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

JOINT APPENDIX

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Certiorari Granted April 21, 2003.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA, Plaintiff, vs. RODNEY JOSEPH GANT, Defendant.	No. CR-2000-0042 DEFENDANT'S MOTION TO SUPPRESS (Filed Apr. 26, 2000) (Evidentiary hearing required) Hon. Clark Munger, Div. 19

Defendant, Rodney Gant, pursuant to Rules [sic] 16.2 moves the court to suppress the fruit of the search of Mr. Gant's vehicle conducted after his arrest in connection with this case. The search was without probable cause or reasonable suspicion, and was not properly incident to Mr. Gant's arrest. This motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Rodney Gant was arrested on August 25, 1999, by Tucson Police Officers who believed that he was driving on a suspended license. After his arrest, his vehicle was searched. The search turned up a handgun and a substance believed to be cocaine secreted in a jacket.

In his report, Officer Griffith of the Tucson Police Department set out the circumstances of the arrest. When Mr. Gant drove up, officers were at that location, in the process of arresting a Mr. White on several outstanding warrants. The relevant portions of Officer Griffith's narrative continue at that point:

"As this was happening a white car pulled up that I recognized from the house from our previous contact. The car pulled into the driveway of the house and I shined my flashlight into the drivers area of the car and saw the subject we had previous contact with. That subject was Rodney Gant 120172. When I had run Mr. Gant on the computer earlier it showed that he had a suspended drivers license & an outstanding warrant for FTA from Pima County Sheriff Dept.

"I walked to Mr. Gant's vehicle as he was walking from the vehicle. I called for Mr. Gant by name and he answered. I took Mr. Gant into custody and placed him & [sic] handcuffs. Mr. Gant asked why he was being arrested and I told him for driving on a suspended license. He voluntarily said he knew his license was suspended, but he just had to run to the store. He also said he did have a warrant for driving on a suspended license that he needed to take care of. Mr. Gant was placed in the back of Ofc. Griffin's patrol car.

"Ofc. Nolan #38874 & Ofc. Reed #31440 did a search of Mr. Gant's vehicle incident to arrest."

This report reveals that, at the time of the search, Mr. Gant was out of his vehicle, had been handcuffed, and had been placed in the back of a patrol car. Indeed, the first contact with Mr. Gant occurred while Mr. Gant was walking away from his vehicle. Such a search, therefore is not incident to the arrest.

The seminal case dealing with a search incident to arrest is *Chimel v. California*, 395 U.S. 752, 762-63 (1969), which established the rule that a warrant is not necessary to conduct a search of the person and the area from which an arrest [sic] might gain possession of a weapon or destructible evidence so long as it occurs relatively contemporaneously to the arrest. Although a warrantless search of Mr. Gant's vehicle would have been justified if justified by probable cause to believe that evidence of a crime or contraband was present (U.S. v. Ross, 456 U.S. 798, 804-09 (1982)), because Mr. Gant was arrested for driving on a suspended license, there was no reason to suspect that evidence of a crime or contraband would be gained in a search. The only justification for the search, then, is to look for a weapon.

The particular rule with respect to the search of vehicles for weapons was set out in *New York v. Belton*, 453 U.S. 454 (1981). As to that rule, it has been observed "[t]hat *Belton* unmistakably forecloses all . . . *post facto* inquiries of actual 'reachability' . . . the only question a trial court asks is whether the area searched is generally 'reachable *without exiting the vehicle*, without regard to the likelihood in the particular case that such a reaching was possible." *U.S. v. Doward*, 41

F.3d 789 (1st Cir. 1994) (quoting 3 Wayne R. Lafave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.1(c) at 16-17 (2d ed. 1987)) (emphasis in original).

In this case, because Mr. Gant had already exited the vehicle and was walking away from it when first contact was made, and he was handcuffed and secured in the back of a patrol car when the search was conducted, the area searched was in no way reachable by Mr. Gant.

Finally, even if the search for weapons was proper, the seizure of the alleged cocaine was not. In his report, Officer Nolan described the sequence leading up to the seizure of the suspected contraband.

"During my search, I observed a large blue/yellow jacked [sic] on the rear seat. I squeezed the left pocket and felt a substance that crumbled in my hand. Inside the pocked [sic] I located a plastic baggy containing a white powdery substance consistent of powder cocaine." After feeling a substance that crumbled in his hand, officer Nolan obviously knew that he had not located a weapon. Nevertheless, he continued the search without justification and without a warrant while Mr. Gant sat some distance away secured by other officers.

Obviously the state must assert that it did not need a warrant to search Mr. Gant's vehicle; not only because no warrant was obtained, but because no warrant could have been obtained. The only evidence that could have been presented was that Mr. Gant had been arrested for driving on a suspended license, and on a warrant for failure to appear on a charge of driving on a suspended license. Had the officers requested a warrant to search

for drugs or weapons, no magistrate would have granted it. The need to be able to conduct a warrantless search of vehicles is based on the fact that cars are movable, and evidence may be lost while the officers are attempting to obtain a warrant. *California v. Acevedo*, 500 U.S. 565 (1991). That does not mean, however, that a vehicle can be searched without cause. They can be searched to look for contraband where there is reason to believe that contraband is present; and they can be searched where there is a risk that an occupant might reach a hidden weapon. Neither exception to the warrant requirement was present here. Accordingly, the fruits of the search of Mr. Gant's vehicle must be suppressed for the reason that the search was conducted in violation of Defendant's rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Arizona Constitution

RESPECTFULLY SUBMITTED this 26th day of April, 2000

/s/ Philip Kimble
Attorney for Defendant

Copy of the foregoing hand-delivered
this 26th day of April, 2000 to:

Hon. Clark Munger
Pima County Superior Court

and faxed to:

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IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA, Plaintiff, vs. RODNEY JOSEPH GANT, Defendant.	No. CR-20000042 **RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS** (Filed May 18, 2000) Hon. Clark Munger Division 19

COMES NOW the State of Arizona, by and through the Pima County Attorney, BARBARA LAWALL, and her Deputy, MARK DIEBOLT, and hereby responds to the Defendant's Motion to Suppress in the accompanying Memorandum of Points and Authorities.

Respectfully submitted this 16 day of May, 2000.

BARBARA LAWALL
PIMA COUNTY ATTORNEY

/s/ Mark Diebolt
MARK DIEBOLT
Deputy County Attorney
State Bar No. 017202
Pima County Attorney's Office
Law Firm No. 69000

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On August 25, 1999, Officer Griffith responded to 2524 N. Walnut in response to a report of possible narcotic activity. Defendant, RODNEY JOSEPH GANT, answered the door. Defendant told the Officer that the resident would be home later in the evening. After running Defendant's name through a computer, the Officer discovered that Defendant had [sic] suspended drivers license and an outstanding warrant.

Later that day, the Officer returned to the house in an attempt to make contact with the resident. When the Officer arrived at the house, a man sitting in the back yard, who identified himself as Ben White, said that he was waiting for a friend. The Officer later learned that the man's real name was Jackie White. Ben/Jackie informed the Officer that he was dropped off by a female sitting in a vehicle parked in front of the house. Subsequently, the Officer made contact with the female. The female said that she was waiting for a man named "Jack" who was at the house in question. The female voluntarily agreed to let the Officer search her car.

Inside a purse on the floor of the driver's seat, the Officer found a crack pipe containing residue.

Subsequently, Defendant arrived at the house driving a vehicle. As Defendant was walking away from his vehicle, he was arrested by the Officer. The Officer discovered $319 in Defendant's pocket. Officer Reed discovered a handgun in the vehicle. Officer Nolan found a jacket on the rear seat and squeezed the left pocket. Inside the pocket, this Officer felt a substance that crumbled in his hand. When he removed the substance, Officer Nolan discovered cocaine in a bag. Defendant now seeks to suppress all evidence obtained by searching his vehicle. His motion must fail for the reasons set forth below.

LAW AND ARGUMENT:

I. THE OFFICERS HAD PROBABLE CAUSE TO SEARCH THE DEFENDANT'S VEHICLE FOR CONTRABAND.

Because of the inherent mobility of automobiles, and because of the fact that there is a lesser expectation of privacy than in houses, police may search a car without a warrant, but must have probable cause to believe it contains contraband or evidence of a crime. *State v. Walker*, 119 Ariz. 121, 127, 579 P.2d 1091, 1097 (1978). Further, if an officer has probable cause to search a vehicle, he may search the whole car and any containers therein. *U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). Since a car is "readily mobile," it can be searched once the officers have probable cause, and there does not need to be any showing of additional

exigency. *Pennsylvania v. Labron & Kilgore*, 518 U.S. 938, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996).

In the case at bar, the Officers had probable cause to search the vehicle. Defendant was present at a house suspected of narcotic activity. Before Defendant returned to the residence in his car, the Officers discovered a man in the backyard who lied about his name. A woman with a crack pipe containing residue was waiting for the man in front of the house. These facts, when viewed together, gave the Officers reason to believe that the house is used for selling drugs. To use a house for selling drugs, one must transport drugs or drug making materials to the house. Because Officers reasonably believed that people were waiting at the house to purchase illegal drugs, they had reason to believe that anyone arriving at the scene was transporting drugs. This conclusion is made more probable by the lage [sic] amount of cash discovered on Defendant's person. Consequently, the Officers had probable cause to search the inside of the vehicle where they discovered a weapon and cocaine.

II. THE OFFICER'S SEARCH OF DEFENDANT'S VEHICLE WAS VALID AS IT WAS INCIDENT TO A LAWFUL ARREST.

A law enforcement officer may search a vehicle after lawfully arresting an occupant of that vehicle. *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). While the reason at the time of *Belton* for allowing the search incident to arrest was "to ensure the safety of the officer and protect evidence from being intentionally destroyed," *State v. Hanna*, 173 Ariz, 30, 32, 839 P.2d 450, 452 (App. 1992), the *Belton* decision

allows searches even when there is little likelihood of an officer being endangered or evidence being destroyed. Such searches are justified by the inherent mobility of cars.

The Court in *United States v. Doward* wrote, "*Belton* upheld a warrantless search of the entire 'passenger compartment' against a claim that all its occupants were outside the vehicle at the time of the search – thus, as a practical matter, no longer within 'reach' of any weapons, evidence or contraband located within the passenger compartment." 41 F.3d 789 (1st Cir. 1994). In other words, an officer may search the inside of a vehicle when arresting the occupant even if the occupant exits the vehicle prior to the search.

In the case at bar, like in *Belton*, the defendant was arrested for a crime committed inside of a vehicle which was discovered by the officer while the perpetrators were located inside the vehicle. Also like in *Belton*, the evidence in question was discovered inside the passenger compartment. Consequently, under *Belton*, the search in the case at bar was legally performed incident to Defendant's arrest.

For the foregoing reasons the State respectfully requests that this Court deny the Defendant's Motion to Suppress the Evidence.

Respectfully submitted this 16 day of May, 2000.

BARBARA LAWALL
PIMA COUNTY ATTORNEY

/s/ Mark Diebolt
MARK DIEBOLT
Deputy County Attorney
State Bar No. 017202
Pima County Attorney's Office
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Hon. Clark Munger
Division 19

/jdm

ARIZONA SUPERIOR COURT, PIMA COUNTY

CASE NO. **CR-20000042**

DATE: MAY 22, 2000

JUDGE:
HON. CLARK MUNGER

COURT REPORTER:
Cheryl Austin

STATE OF ARIZONA — Mark Diebolt

VS.

RODNEY GANT — Philip Kimble

MINUTE ENTRY

(Filed May 22, 2000)

HEARING RE MOTION TO SUPPRESS:

Defendant present in custody.

Court and counsel briefly discuss the facts in this case.

Mr. Kimble and Mr. Diebolt present oral argument to the Court.

For reasons stated by the Court on the record, the Court believes at this time that the Court will deny the Motion to Suppress after counsel present further memoranda to support their positions.

cc: Hon. Clark Munger
Criminal Calendaring
County Attorney – M. Diebolt
Sheriff
Philip Kimble, Esq.

/s/ Mary Bailey
Deputy Clerk

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA, Plaintiff, vs. RODNEY JOSEPH GANT, Defendant.	)	Case No. CR-20000042 2 CA-CR 00-0430

Monday, May 22, 2000
Tucson, Arizona

OFFICIAL COURT REPORTER'S TRANSCRIPT

MOTION TO SUPPRESS

(Filed Jan. 5, 2001)

BEFORE: THE HONORABLE
CLARK W. MUNGER, JUDGE

APPEARANCES:

For the State:

MARK DIEBOLT, Esq.
Deputy County Attorney

For the Defendant:

PHILIP KIMBLE, Esq.
Attorney at Law

Cheryl Cesare, CSR, RMR
OFFICIAL COURT REPORTER
Pima County Superior Court
Tucson, Arizona

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[3] PROCEEDINGS

THE COURT: State vs. Grant – Gant, pardon me, CR-20000042.

MR. DIEBOLT: Your Honor, Mark Diebolt appearing on behalf of the State.

MR. KIMBLE: Good afternoon, your Honor, Philip Kimble for Mr. Gant, present, in custody. Your Honor.

May my client sit at counsel table with me?

THE DEPUTY: Yeah.

THE COURT: Yes.

This is defense motion to suppress. I have read the respective briefs. It doesn't sound as though we have any 9th Circuit or Arizona case that's just exactly right on point, here.

Is that counsel's belief also?

MR. DIEBOLT: Can I have just one second, Judge?

MR. KIMBLE: Your Honor, the defense is not aware of a controlling Arizona 9th Circuit case that we would consider directly on point.

THE COURT: Okay.

MR. DIEBOLT: And, your Honor, the only 9th Circuit case is *State vs. McLaughlin*. – *State* [4] *vs. McLaughlin*, 175 F.3d 889, just talking about automobile search commencing five minutes after the defendant has been arrested or removed from the scene.

THE COURT: All right.

MR. DIEBOLT: They agree that the search in that case occurred during a continuous series of events closely connected in time to the event so, therefore, it was a valid search.

THE COURT: Are any of the facts in issue? It seemed to me that from your respective briefs, that there didn't seem to be any disagreement. As I understand the facts – and let me repeat what I understand they are: That this arose out of a report of possible narcotic activity; police went to the – police went to the residence, knocked on the door. The defendant answered, but told them apparently that he was not –

Are these potential witnesses?

MR. DIEBOLT: They are, your Honor. Both police officers.

THE COURT: Maybe it would be appropriate that they are not here while I reiterate what I understand the facts to be.

MR. DIEBOLT: That's fine. Okay. The [5] only reason I'm keeping them, if they want to clarify the Court the different –

THE COURT: Well, I'll leave that up to the two of you to clarify by testimony. Okay?

MR. DIEBOLT: Okay.

THE COURT: That they ran a computer check on Rodney Joseph Gant and found that he was wanted on a suspended driver's license and, also, an outstanding warrant for failure to appear.

MR. DIEBOLT: Yes, sir.

THE COURT: They came back – they left and then came back to the residence, found a man and a woman around the residence. The woman had a crack pipe. The man, they didn't apparently find any contraband on him. Then the defendant arrived, driving a vehicle, and the officer, as the car pulled into the driveway, shined his flashlight into the car, recognized Mr. Gant as the individual he had previously met at the door and identified him as Mr. Gant.

And as the officer was walking toward the vehicle, Mr. Gant got out of the vehicle and started walking toward the officer when the officer called him by name, and he responded that that was who he was. And the officer took him in custody for the [6] outstanding warrant and suspended driver's license, having seen him operating a motor vehicle. So he – there's no question that he could legally arrest and did lawfully arrest the defendant on the outstanding warrant and for operating a motor vehicle without a driver's license.

Mr. Gant was removed from the vehicle – from the vicinity of the vehicle to the officer's patrol car and placed in the back of the patrol car, and the officers then did a search of the defendant's vehicle, found a weapon and found the jacket. And, apparently, feeling the jacket, felt something that they felt might be drugs and took it out of the pocket and found cocaine.

Is there any disagreement with –

MR. KIMBLE: I believe – again, not yet having interviewed the officers and relying on their reports, those are the facts that I recited in my motion.

THE COURT: Okay.

MR. KIMBLE: And I believe those – those are consistent. I'm not aware that the State has any disagreement with any of those. And I am willing to base my motion on those assertions of facts in the reports.

[7] THE COURT: Okay. Mr. Diebolt, do you have anything – any disagreement with the version of the facts?

MR. DIEBOLT: I have no disagreement, Judge.

THE COURT: All right. Do we need the officers, then, for testimony?

If you want to, that's fine.

MR. KIMBLE: I do not. If –

MR. DIEBOLT: I just subpoenaed them in case we had to have them. I didn't want to get caught without having witnesses.

MR. KIMBLE: Sure. I think I would be entitled, if there was some issue about the facts.

THE COURT: Absolutely. If you want them.

MR. KIMBLE: But if the State concedes those are the facts, I think those are facts sufficient to proceed on the motion.

THE COURT: All right.

MR. DIEBOLT: I have no disagreement with the facts. I'd be happy to submit, also, on my pleading as well.

THE COURT: All right. Okay. Then I think we can tell the officers – wait for Mr. Gant to talk with his attorney.

[8] (Attorney-client discussion.)

MR. KIMBLE: I'm sorry, your Honor.

THE COURT: If there's no need for testimony, we can tell the officers they're free to go.

MR. KIMBLE: I have no objection.

MR. DIEBOLT: May I ask just ask, procedurally, where we're going to go at this point? I'm just curious as to –

THE COURT: Well, I'd like to hear oral argument from you.

MR. DIEBOLT: Okay. Is there any – since they are here –

THE COURT: Well, we'll have them wait. That's fine.

MR. DIEBOLT: Just for the period of time it's going to take to resolve it.

THE COURT: All right.

MR. KIMBLE: Your Honor.

THE COURT: Yes, sir.

MR. KIMBLE: May I inquire of counsel if the case cited is one cited in your response?

MR. DIEBOLT: The *McLaughlin* case?

MR. KIMBLE: Yes.

MR. DIEBOLT: I was looking. I don't [9] believe it's in my response.

MR. KIMBLE: If the Court would like it – sounds like it might be more on point than anything I found. If the Court would like any further argument on that after this, I'd be happy to review it and provide supplemental.

THE COURT: If you want to take a look – is it *McLaughlin, McLaughlin.*

MR. DIEBOLT: *U.S. vs. McLaughlin.*

THE COURT: Do you want to review that and submit a Reply and submit it on –

MR. KIMBLE: I might if the Court would permit. I just don't know.

THE COURT: Certainly.

MR. KIMBLE: Whether the facts are distinguishable or if they're helpful or whatnot. I haven't read the case yet myself.

MR. DIEBOLT: And, your Honor, I only just found that looking through a different source that I don't – I had to get a copy from my supervisor.

THE COURT: And what – again, what's the cite?

MR. DIEBOLT: It's *U.S. vs. McLaughlin*, M-c-L-a-u-g-h-l-i-n, 170 F.3d 889, 891, pages, 9th Circuit, 1999.

[10] THE COURT: Okay. I will take a look at that.

MR. KIMBLE: Your Honor, the justification of the search in this case is always incident to an arrest. And certainly that's the only reason it could have been justified because there was no warrant, there's no reasonable suspicion.

THE COURT: I don't think they had probable cause to arrest on a drug charge, and I think that was the thrust of your argument. And the State has argued that, well, they didn't have probable cause to arrest on a drug [sic]. I don't think they did.

MR. KIMBLE: You know, and I don't even see any – they did not even claim that they were arresting on that basis. They were claiming they were arresting because they saw him driving. And that, apparently, would be a misdemeanor occurring within the vision of an arresting officer.

Now, interestingly – I have to question whether or not there was a pretextual reason for the arrest, because they had justification for an arrest previously based on the fact that they were aware when they were there previously that Mr. Gant had – had an outstanding warrant, not having seen him [11] driving. And whether it's out of the goodness of their hearts that they did not arrest him at that time or they were seeking some further pretext, I don't know. And I don't know whether or not even testimony on that point would be salient to a decision by the Court, because what think [sic] I think is important is what happened when Mr. Gant was arrested, is he pulled up, at some point they determined that it was him driving. Either as he was driving up or when he got out or at some point they determined it was him. Based on the previous contact, they were aware he was not supposed to be driving and he was. The contact they had with him is outside the vehicle. The vehicle was not in a place where it was obstructing traffic. He was parked at a private residence.

This is an arrest for a misdemeanor, and, presumably, additionally on failure to appear, which I believe either – I do not believe there was an indication of what the failure to appear was. Obviously, it's reasonable to assume it was for a misdemeanor since they did not arrest him previously. And my supposition is that it was for a driving-on-a-suspended, although I don't know if that is even in the reports, and it's not even clear [12] whether or not the officers were aware that they were – the nature of the failure to appear. In any case, they were arresting him on a misdemeanor when he is away from the vehicle, where there was no need to secure the vehicle, when the vehicle is locked.

Now, a search incident to arrest is necessary to prevent the loss of evidence or contraband, where there is reason to believe that the person would be a suspect. An arrest for driving on a suspended license has no inference or cause to believe that there would be drugs, instrumentalities of criminal activity, contraband, or anything of evidentiary value in the vehicle that the defendant left; therefore, the only real justification is search for weapons.

There, you get in a couple of problems. One, sure, they can search him and they can search an area within his control for weapons. They can even probably search areas in a car that are not readily immediately accessible to him if it's incident to the arrest. But at the time the vehicle was searched, Mr. Gant was under arrest. He was removed from the area, he was secured in the back seat of a patrol car, and he was not even initially contacted until he was away from the vehicle. So he [13] had no more connection to anything – any weapon that might be in that vehicle than any other person walking by, because he had no access to that vehicle at the time it was searched.

Second problem is the officers searched this jacket they find in the back of a car. Now, they feel something that they – the officer that searches feels something that they perceive could be a weapon, and it turns out to be a gun. The officers say they feel something else – he feels something else crumbling.

Now, if what we're talking about is a legitimate search for contraband, there would be an argument that one would expect something, cocaine or some other illegal substance to be crumbly, like that, on supposition that probably people aren't carrying flour in their pockets. But it is not searched for that purpose because there's no

reason to suspect that there were drugs involved in this arrest since it was an arrest for driving on a suspended license.

If it can only be justified a search for officer safety reasons, when they feel something crumbly, now it's not a weapon and the search can go no further. They continue to search either on the [14] justification or the belief they have a legitimate right to search for drugs and find the contraband that, then, become the basis of the charge here.

Mr. Gant did not have access to it, so it was not a legitimate search for [sic] weapon. Even if it was a legitimate search for a weapon, they knew it wasn't a weapon as soon as they felt it, yet continued with the search.

Therefore, for both of those reasons, it's an improper search not incident to his arrest for misdemeanor driving on a suspended license.

MR. DIEBOLT: Thank you, your Honor.

First of all, as everyone is aware, and I want to just reiterate that, automobiles have a lesser expectation of privacy than a home. Obviously, they're treated differently. I want to jump ahead under case law, your Honor, *New York vs. Belton*, when a policeman has made a lawful custodial arrest, that police officer, contemporaneously to that that [sic] arrest, may search the passenger compartment of that automobile. It doesn't say he has to search for any particular item. He may – he or she may search the compartment of the car and any containers therein, and he may open those containers and look into those containers.

[15] So let's just talk about the jacket. That's what we're going toward is the jacket.

I want to bring out in *State vs. Milton – United States vs. Milton*, the Supreme Court held that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he, contemporaneous to that arrest, may search the passenger compartment of the automobile. Under *Belton* the police may also examine the contents of any containers found within the passenger compartment. "Container" as defined in *Belton*, you know, include [sic] the glove compartment, et cetera. *Belton* applies even if the arrestee has been separated from the vehicle prior to the search of the – of the compartment that they're talking about.

Jumping ahead to State – *U.S. vs. Woody*, W-o-d – W-o-o-d-y, the Supreme Court has articulated two reasons which justified the warrantless search of an automobile: first, to uncover weapons, in this case a weapon was uncovered; two, to prevent the disappearance or destruction of evidence of a crime. Certainly, if those officers had not found that – I believe my information is 13.6 grams of powder cocaine, that [16] evidence could have easily been destroyed, taken away, or removed from that vehicle. Thus, an arrest of the occupant of the car justifies an automobile search of the car's passenger compartment, regardless of whether the officer's [sic] effecting the arrest reasonably believe the arrestee to be rust [sic] or within reach of a weapon. And that is *State vs. Woody*.

I can give the cite if you want. Police thus have a right to search the car's passenger compartment, including open and closed containers, irrespective of any privacy interests the car's occupants might have to their belongings. And I would certainly submit to the Court that a coat or jacket, in this case, would fall within closed container description.

The last one I want to bring to the Court's attention is defense counsel mentioned that he was away from the car. *McLaughlin* addresses that, and I just mentioned *McLaughlin* today, and it wasn't mentioned in my cites. If defense needs more time, I respect that. But *McLaughlin*, again, talks about the *Belton* bright line rule, that they may search a compartment. And they agree that it doesn't have to be done at the exact second. A [17] person can be removed, placed away, placed under arrest, and the officer can then go back and search the car and – although other search privileges, if you will, that the officer has are still valid.

And based on all that case law, I would submit everything else to the Court on the pleadings.

MR. KIMBLE: Part of the problem here is that Mr. Gant, when he was arrested, was away from the car. This is not a situation where the police pull someone over, effect an arrest, essentially, of the person in the car, remove them from the car, and then search it. He was as removed from the – from that car as I am from my truck, which is parked in the parking lot.

Now, I don't think anybody would argue that if the deputy arrested me here, that there would be justification to go search my truck. I am removed from it. And Mr. Gant was removed from his car before the first contact was made with the officers. He's walking away, as it says in the report, and they come up to him. So they are making an arrest of him, essentially, out in public, not in the vehicle.

And it's being realistic – it's clear why [18] the officers have to say they're making this search incident to the arrest. One, they could have gotten a warrant or they

could have tried to get a warrant, and it's because, obviously, they were watching the premises. They were back there twice. So it's not as if they're making a stop on the highway, and if they don't search now they don't have an opportunity to search. If they thought they could get a warrant, they could call a judge or a magistrate, get a warrant while they're sitting there waiting.

It's clear why they didn't do that, because no judge or magistrate would give them a warrant. If they said, we saw this person driving up to his house, we think that some illegal activity might be going on and we arrested him for driving on a suspended license, would you then give us a warrant to search his car for drugs or weapons?, a judge is going to say no. There is no reason to suspect that somebody driving on a suspended license up to a house – up to a house, not away from the house, even where you suspect illegal activity is going on, would have drugs or weapons.

So they have to say it's incident to an arrest to get around the warrant requirement. The problem is the exigency really goes to whether or [19] not he needed the warrant, not whether or not you should be able to search. Here Mr. Gant was separated from the car before the contact occurred. They had no reason to search for drugs, even if they had reasons to search for weapons. He was away from it by the time they had contact with him. And when they found something, they knew it wasn't a weapon, they continue to search, and that's not what's permissible. Thank you.

THE COURT: I think I need to deny the motion for two bases – two reasons: One, the officers clearly saw Mr. Gant operating a motor vehicle when they knew he

didn't have a license, so they saw him committing a crime; Mr. Gant got out of the vehicle. Had they walked – had the officers walked a little faster and gotten to the vehicle before Mr. Gant got out, I don't think there's any question they could search anywhere in that vehicle. He's in the vehicle. Anything within the passenger compartment, locked or unlocked, can be searched for weapons, drugs, anything.

The fact that Mr. Gant was fast enough and clever enough to get out of the vehicle I don't think limits the officer's ability to search the vehicle when they were arresting him for an illegal [20] operation of the vehicle. They saw him operating it against the law. They clearly had the ability to search for weapons even if – and I think that's so even if he was outside the vehicle. Once they found the weapon, I think then they had probable cause to search further.

And I think they could have gotten a warrant at that point based on the facts as the officers knew them to be once they found the weapon in the vehicle. They could, at that point, have called a judge and have gotten a search warrant to search for illegal contraband, given the fact that they found somebody waiting at the residence who had a crack pipe. They had another individual sitting in the back yard for no apparent reason. They apparently had some information that there was narcotic activity going on at the house. And also given the fact Mr. Gant had told them that the resident was out and would be coming back later, which would appear to have been a lie to the officers, they may have – I don't know whether he was trying to mislead them or what, but I think under – I don't think he can limit the scope of the search by vacating the car faster than the officers can get up to the car.

[21] I don't think, for instance, that the scope of the search is limited by how fast the defendant can run. Once the officers saw him in the vehicle, I don't think it's a foot race to see whether the officers can get to the vehicle before the defendant steps out and walks a few steps away from the vehicle. And I think that's what the effect of granting the motion would be, is to say that the defendant controls the scope of the search by how fast he can walk or run.

Now, I'd be glad to look at the *McLaughlin* case, but it sounds to me as if that tends to come down on the side of the Government here. But if you want to submit Memorandum, I'd be glad to listen – to read them. I wanted to tell you where my thought processes are right now. If you want to submit further Memorandum, I'd be glad to take a look at them.

MR. KIMBLE: Your Honor, if I could have an opportunity, you know, to at least do so, if you feel it would be of assistance to the Court, if the Court would give me a couple days to do that.

THE COURT: Certainly. How is – this is the 22nd of May. How is this Friday?

MR. KIMBLE: That's fine. And what I can [22] do is I can inform the Court if I feel that no further briefing is needed.

THE COURT: If I intend to still deny the motion, I will simply say Motion is denied for the reasons set forth before in court rather than write out a full opinion.

MR. KIMBLE: Very good. May I just, for the record, make further argument –

THE COURT: Certainly.

MR. KIMBLE: – regarding the Court's –

THE COURT: Absolutely.

MR. KIMBLE: – issues?

The issue about whether Mr. Gant – the method which Mr. Gant is leaving the vehicle I think is addressed in the actual report by Officer Griffith, who states, I watched Mr. Gant's vehicle as he was walking from the vehicle, which I suggest does not indicate some sort of foot race on either part to try to thwart the officer or the officer to thwart Mr. Gant's exit from the vehicle.

It appears, rather, that the circumstances are such that Mr. Gant was leaving the vehicle, having parked the car where he intended to end his journey, not a situation where somebody is being pursued by a vehicle, stops, gets out, and runs away [23] from the vehicle as part of pursuit. This is an individual who has voluntarily left the vehicle not knowing that he is going to be arrested, not suspecting that the officers have any intention of detaining him or searching his vehicle. So it is not that he is doing anything, I believe, to thwart the officers by the method of his departure.

I think there is no more justification than if the officers, having seen the officers, were at Dunkin' Donuts, and across the street they saw somebody pull up who they personally knew had a warrant out for them, get out of his vehicle, go into a bar; the officers finish their coffee and donuts, and then later decide to go over and arrest the individual and say, You know what?, we're going to search the vehicle as well; there, I think, just as much as in this

case. The individual had removed himself from the vehicle absent the intervention of law enforcement.

And I think it makes a distinction because I think these other cases – and I'll look up *McLaughlin* as to this particular point – deal with where the officers have made the stop or have initiated the contact with the defendant, is aware is being initiated while the defendant is in contact [24] with the vehicle. And that, therefore, there's reason to think that the defendant may have done something in connection with the vehicle, secreted a weapon, done something with evidence that they would have to address.

That's my further record, and I'll brief further if I deem appropriate.

THE COURT: I appreciate it. Thank you. Anymore [sic] the State wants to add?

MR. DIEBOLT: No, your Honor. Thank you.

THE COURT: Thank you. I'll look forward to the memo.

MR. KIMBLE: Thank you, your Honor.

(Proceedings concluded.)

[25] CERTIFICATE

STATE OF ARIZONA,)
) ss.
COUNTY OF PIMA)

I, Cheryl Cesare, do hereby certify that as an Official Court Reporter for the Pima County Superior Court, I

reported the foregoing proceedings to the best of my skill and ability; and that the same was transcribed under my supervision via computer-aided transcription; and that the foregoing pages of typewritten matter are a true, correct, and complete transcript of all the proceedings had as set forth in the title page hereto.

/s/ Cheryl L. Cesare
CHERYL CESARE, CSR, RMR
CSR No. 10318 (CA)
Official Court Reporter

Jan. 2, 2001
date

My Commission Expires:

January 31, 2002

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE:
HON. CLARK MUNGER CASE NO. **CR-20000042**

COURT REPORTER: NONE DATE: June 5, 2000

STATE OF ARIZONA

VS.

RODNEY JOSEPH GANT

MINUTE ENTRY

(Filed June 5, 2000)

IN CHAMBERS RULING ON MOTION TO SUPPRESS:

Pursuant to the Court's minute entry of May 22, 2000, the Court notes that Counsel have not filed supplemental memorandum, therefore,

IT IS ORDERED the Motion to Suppress is **DENIED**.

cc: Hon. Clark Munger
Criminal Calendaring
County Attorney-Mark Diebolt, Esq.
Philip Kimble, Esq.

/s/ Mary Bailey/MM
Deputy Clerk

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with the State's assertion of its immunity and its dismissal from the suit on that basis. Indeed, by invoking its sovereign immunity, the State expressly disavowed any waiver of its immunity.

Given that the State preserved its immunity by filing a motion to dismiss on Eleventh-Amendment grounds and obtaining such a dismissal, it cannot be said that the State unequivocally expressed a consent to be sued in federal court. Moreover, defensive litigation conduct on behalf of defendant state officials does not function as consent to suit. *See Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 547 (2002); *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 394 (1998). The State did not voluntarily initiate this action, voluntarily become a party to this action through intervention, or voluntarily file a claim in this action. *Cf. Gardner v. New Jersey*, 329 U.S. 565 (1947); *Clark v. Barnard*, 108 U.S. 436 (1883). And unlike the situation in *Lapides*, the state agencies and state health officials in this case did not elect a federal forum. Rather, they were brought into federal court involuntarily as defendants. Accordingly, this case does not come within the "general principle" recognized in *Lapides* of voluntary invocation of federal-court jurisdiction.

b. Voluntary consent cannot be given in an *Ex parte Young* case because the State is not a party.

The actions relied upon by Frew to make her case—the general course of conduct by the state-official *Young* defendants over a period of years—do not constitute a clear and unequivocal waiver of the *State*'s sovereign immunity. Frew's inability to identify a particular point in time at which the purported waiver occurred confirms the indefiniteness and ambiguity of the waiver that she advances. The conduct cited by Frew in this case was not "unequivocal" evidence of consent to suit so as to "leave no room for any other reasonable construction." *Edelman*, 415 U.S., at 673.

Indeed, the very premise of a *Young* suit precludes the necessary clarity of any waiver. The *Young* fiction allows state officers to be sued by deeming their conduct in violation of federal law to be *ultra vires* and therefore not the State's. But jurisdiction extends only so far as to allow for prospective injunctive relief; it does not entitle them, in defending that litigation, to waive Eleventh Amendment immunity altogether and render *Young* (the fictive vehicle of federal-court jurisdiction) irrelevant. Indeed, all three of the "affirmative invocation" cases relied upon by Frew—*Lapides*, *Gardner*, and *Clark*—were not *Young* suits, but suits prosecuted by or against the State itself, for only the State can waive its Eleventh Amendment immunity. *See Lapides*, 535 U.S., at 616; *Gardner*, 329 U.S., at 569-70; *Clark*, 108 U.S., at 447-48.[28]

Moreover, were the law to change, the States have had no warning that entry into consent decrees in *Ex parte Young* suits could constitute a waiver of immunity. To attribute waiver to unsuspecting States whose state officials have already entered into consent decrees would comport with neither the Court's insistence on a knowing waiver of immunity nor the Court's customary indulgence of every reasonable presumption against waiver. *See Coll. Sav. Bank*, 527 U.S., at 682; *see also Lapides*, 535 U.S., at 624 (noting Justice Kennedy's observation in *Schacht* that "once the States know or have reason to expect that removal will constitute a waiver," then removal could be regarded as a voluntary invocation of federal jurisdiction); *Schacht*, 524 U.S., at 397 (Kennedy, J., concurring).

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28. Frew also relies on *Gunter* to support her argument that the State invoked the jurisdiction of the federal court. *See* Pet'r Br., at 21. *Gunter* was a suit against a state officer, not the State, but *Gunter* never extended beyond the boundaries of *Young*: plaintiffs sought only prospective injunctive relief, both before and after the deemed waiver, and the extent of that relief was only to enjoin ongoing violations of federal law found after a full adjudication on the merits. 220 U.S., at 292.

c. The language of the decree does not reveal a waiver.

The language of the consent decree fails to evince consent by the State to suit in federal court. The provisions of the decree relied upon by Frew state that "[t]he term 'will' creates a mandatory, enforceable obligation," and that "the parties may request relief from [the district court]" if the "Defendants' future activities [do not] comport with the terms and intent of this Decree." Lodging, ¶¶302, 303. By their own terms, these provisions fail to establish a clear and unequivocal intent by the State to waive its immunity. Indeed, they do no more than define a term and acknowledge that the parties "may request relief" from the district court; they do not purport to determine whether that relief will be available, which remains constrained by the limitations of *Ex parte Young*.

Paragraph 303—the sole basis of Frew's belated argument before the court of appeals—reveals no unequivocal expression of waiver. That provision appears in a "miscellaneous" set of provisions at the close of the decree, and its acknowledgment that the parties "may request relief from" the federal court does not declare that the State waived its immunity or any other affirmative defense to all types of relief a party might request in the future. Indeed, ¶303 does not even mention sovereign immunity or the Eleventh Amendment, nor are they the subject of any surrounding provisions.

Frew's argument is further undermined by ¶301's statement that "[p]laintiffs do not concede the validity of Defendants' defenses," which implicitly acknowledges that the State preserved defenses notwithstanding agreement to the decree.[29] If ¶302 and ¶303 represented the parties'

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29. Frew and the U.S., also erroneously place substantial reliance on ¶302's statement that "[t]he term 'will' creates a mandatory, enforceable obligation." *See, e.g.*, Pet'r Br., at 27; U.S. Br., at 15. In any

understanding that the State was waiving its immunity from suit, as Frew advances, ¶301 would have specifically referenced waiver of Eleventh Amendment immunity. Because the meaning of a decree's provisions must be discerned in light of the entire decree, ¶301 reveals the implausibility of Frew's reading of ¶302 and ¶303. At a minimum, the tension between ¶301, ¶302 and ¶303 creates an ambiguity that precludes an inference of waiver. *Coll. Sav. Bank*, 527 U.S., at 682.

3. *Lapides* did not alter the requirements for a State's consent to suit in federal court for federal-law claims.

Lapides's removal holding did not establish a new waiver standard under the Eleventh Amendment. Rather, the Court's analysis rested on the same principles of clear and unequivocal consent that inform all valid waivers of sovereign immunity. Frew incorrectly reads the Court's decision in *Lapides* as a broad license to imply waivers of sovereign immunity from litigation conduct. The Court, however, expressly limited its waiver-by-removal holding to the narrow "context of state-law claims, in respect to which the State had explicitly waived immunity from state-court proceedings." *Lapides*, 535 U.S., at 617; *id.*, at 617-18 (explaining that the Court was not "address[ing] the scope of waiver by removal in a situation where the State's underlying sovereign immunity from suit has not

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event, ¶302 cannot be read in isolation. *Cf. Armour*, 402 U.S., at 681-82. It must be read in conjunction with ¶301's provisions that (1) "[p]laintiffs do not concede the validity of Defendant's defenses," (2) "[d]efendants do not concede liability," and (3) "[t]his Consent decree represents the parties' attempt to resolve many of the issues in this litigation amicably . . . without the need for the Court's intervention." Read together, these provisions cannot comprise a clear expression of an intention on the part of the State to submit itself to the jurisdiction of the district court.

been waived or abrogated in state court"). Contrary to Frew's suggestion, the Court in no way altered the requirements for a State's consent to suit in federal court for federal-law claims.

Frew's suit does not fit within *Lapides*'s rubric because no removal occurred and because this case does not involve a claim—state or federal—for which the State's "underlying sovereign immunity" has been waived (*i.e.*, by state statute) or abrogated (*i.e.*, by Congress through §5 enforcement powers) in state court.[30] In any event, the only question in *Lapides* was which *forum* could adjudicate the suit in light of Georgia's statutory consent to tort suits in state court *coupled with* Georgia's removal of the suit to federal court. Given that Georgia already had waived its underlying sovereign immunity through a statute, the State's removal was deemed sufficient to invoke federal jurisdiction and, therefore, waive the *forum* immunity otherwise afforded by the Eleventh Amendment. *See Lapides*, 535 U.S., at 624; *cf. Pennhurst*, 465 U.S., at 99 (requiring a State's express consent to suit in federal forum regarding claims for which underlying sovereign immunity is waived in state court).

In other words, the States possess two types of sovereign immunity. First and foremost is the States' constitutional sovereign immunity, which inheres in the Nation's framework and emanates from the States' sovereign status. *Alden*, 527 U.S., at 728-29. Second, included within that sovereign immunity is a specific immunity from suit in a federal forum—which the

30. No Texas statute consents to Medicaid suits in state court. And Congress did not validly abrogate the State's sovereign immunity from suit under the Medicaid Act. *See Fla. Dep't of Health & Rehab. Servs. v. Fla. Nursing Home Ass'n*, 450 U.S. 147 (1981).

Eleventh Amendment's text confirms. *Id.*; *see* U.S. CONST. amend. XI. Thus, Eleventh Amendment "forum immunity" is but one aspect of the underlying sovereign immunity that prevents a State from being sued—at all—in any forum.[31] *See Alden*, 527 U.S., at 728-29.

Even if *Lapides* were extended to federal claims for which no legislative consent exists—which the Court should not do—the only waiver would be of forum immunity. Texas's underlying constitutional immunity would remain intact because the Texas Legislature has not consented to Medicaid suits and the State's "constitutional right not to be sued at all," U.S. Br., at *22, *Lapides* (No. 01-298), would bar the enforcement action even if forum immunity did not.

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31. The forum-immunity concept was crystallized in a brief submitted by the United States as *amicus curiae* in support of Petitioner Lapides, which emphasized the limited nature of the waiver that occurred when Georgia removed Lapides's suit:

> "Although a State's removal of a case effects a waiver of its immunity from suit in a federal forum, there are significant limits on the scope of that waiver. The Eleventh Amendment incorporates two forms of immunity. A State may choose not to be sued at all, or it may choose to be sued, but only in its own courts. *Pennhurst*, 465 U.S., at 99. A removal of a case to federal court waives only *forum immunity*. By voluntarily and affirmatively selecting a federal forum for litigation of a case, the State consents to have a federal court rather than the state court decide the case. The act of removal, however, cannot be understood to waive any defenses that would have been available to the State in state court. The constitutional right not to be sued at all is just such a defense." U.S. Br., *Lapides v. Bd. of Regents of the Univ. Sys. of Ga.*, 2001 WL 1643411, at *22 (Dec. 20, 2001).

C. An Assistant Attorney General's Representation of State Officials in Negotiations and Proposal of a Consent Decree Cannot Be Regarded as the Consent of the Sovereign.

1. The Attorney General for the State of Texas is not authorized to waive the State's immunity from suit in federal court.

Frew erroneously urges the Court to construe the negotiation and proposal of the consent decree as an implied consent by the State to federal court jurisdiction. But the type of constructive or implied consent Frew proposes cannot support a waiver of Eleventh Amendment immunity because: (1) this Court has repudiated the constructive-waiver doctrine, *see Coll. Sav. Bank*, 527 U.S., at 680; and (2) any alleged implied waiver was not authorized under state law. In *Ford Motor Co. v. Department of Treasury*, the Court determined that a state official's ability to consent to suit turned on the "power under state law to do so," and that immunity from suit could not be waived by the litigation conduct of an executive officer who lacked the authority to effectuate such a waiver. 323 U.S. 459, 467 (1945). Although, in *Lapides*, the Court overruled *Ford* in the context of an attorney general's removal of state-law claims for which the state had consented to suit in state court, the Court expressly stated that it was overruling *Ford only to the extent* that it was inconsistent with *Lapides*'s narrow waiver-by-removal rule. 535 U.S., at 622. In this case, *Ford*'s holding remains vitally important because the state officials involuntarily found themselves in federal court and because neither the assistant attorneys general representing the state-official defendants, nor the defendants themselves, are empowered to contract away legislative powers such as the authority to make policy and budgetary decisions for the State's EPSDT program.

Although, as emphasized by Frew and her *amici*, whether a "particular set of state laws, rules, or activities amounts to a waiver of the State's Eleventh Amendment immunity" is a "question[ ] of federal law," 535 U.S., at 622-23, the Court has never suggested that state laws and rules should not be consulted in making that determination. Indeed, the Court has explained that the ultimate "federal question can be answered only after considering the provisions of state law." *Regents of Univ. of Cal. v. Doe*, 519 U.S. 425, 428 n.5 (1997) (cited with approval in *Lapides*, 535 U.S., at 623).

To be sure, the Court in *Lapides* did scale back the reach of *Ford*'s holding that state law defines the limits of state officials' authority to offer consent to suit in federal court. The Court concluded that *Ford* was inconsistent with the principle of voluntary invocation of federal jurisdiction and overruled *Ford* "insofar as it would otherwise apply." *Lapides*, 535 U.S., at 622 (explaining that *Ford* did not apply because the State had "*voluntarily* invoked the jurisdiction of the federal court," and it had not been "*involuntarily* made a defendant in federal court"). *Ford*'s establishment of the limits of state officials' authority, however, retains force in this case because none of the defendants voluntarily came to federal court.

Texas law makes clear that neither the Attorney General nor the defendant state officials can waive the State's immunity. Only the Texas Legislature can waive the State's sovereign immunity.[32] *See, e.g., Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002); *Gen. Servs. Comm'n v. Little-Tex Insulation*

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32. Frew does not suggest that the state officials had the authority to waive the State's immunity. Nor could she. The defendant officials' authority is limited to "responsibility for ensuring the delivery of state health and human services," TEX. GOV'T CODE §531.002, and "administer[ing] and enforc[ing] the health laws of this state under the board's supervision," TEX. HEALTH & SAFETY CODE §12.021.

Co., 39 S.W.3d 591 (Tex. 2001). Indeed, the Texas Legislature has expressly disclaimed any authority for the Attorney General to waive immunity from suit: "An admission, agreement, or waiver made by the attorney general in an action or suit to which the state is a party does not prejudice the rights of the state." TEX. GOV'T CODE §402.004; *see also League of United Latin Am. Citizens v. Clements*, 999 F.2d 831, 840 (CA5 1993) (stating that the Attorney General "cannot bind state officials, his clients, to his own policy preferences").

Despite Texas law establishing that the Texas Attorney General lacks authority to waive the State's Eleventh Amendment immunity, Frew claims that mere empowerment to represent the State in litigation means that the Attorney General enjoys authority to waive the State's immunity. Pet'r Br., at 29-30. Frew's argument, however, is directly refuted by *Ford*, which rejected the notion that the powers conferred on a state attorney general "to appear and defend actions brought against the State or its officials can be deemed to confer on that officer power to consent to suit against the state in courts when the state has not consented to be sued." 323 U.S., at 468. And *Ford*, for claims where state defendants were involuntarily haled into federal court, remains good law.

Aside from this discredited authority theory, Frew's only other alleged source of Attorney General waiver authority is an implied power from the Texas Attorney General's authority "to propose" settlements in litigation. *See* Pet'r Br. 30 & n.18 (quoting *Terrazas v. Ramirez*, 829 S.W.2d 712, 722 (Tex. 1991)). Frew misplaces reliance on *Terrazas*, which was a plurality opinion that merely noted that the Attorney General, in the course of representing state defendants, may "propose a settlement agreement." 829 S.W.2d, at 722. Indeed, the Texas Supreme Court has since confirmed that "the Attorney General can only act within the limits of the Texas Constitution and statutes, and courts cannot enlarge the Attorney General's powers."

Perry v. Del Rio, 67 S.W.3d 85, 92 (Tex. 2001) (citing *Terrazas*, 829 S.W.2d, at 735 (Cornyn, J., concurring)).

Because no properly authorized officer of the State waived the State's immunity to suit in the federal courts—through agreement to the consent decree or any other action—no valid waiver of Texas's Eleventh Amendment immunity occurred.

2. The States' legislatures—not executive or administrative officials—are uniquely equipped to decide whether and where to consent to suit.

The Court should look to *Ford*'s reliance on state law to define the authority to waive a State's immunity—especially when state defendants find themselves involuntarily in federal court—because to ignore state law on this question would divest state legislatures of the ability to manage both the public fisc and public programs providing for the health and welfare of the State. Indeed, ignoring the authority issue would permit a small group of executive officials and their lawyers to bind the State to ongoing multi-million-dollar obligations without any input from the politically responsive and accountable legislative branch.

The decision to consent to suit has traditionally rested with the legislatures of the States. *See, e.g.*, *Alden*, 527 U.S., at 757-58. Not surprisingly, States have consistently confirmed their legislatures' exclusive authority to waive sovereign immunity. *See, e.g.*, TENN. CONST. art. I, §17; *Baker v. Ives*, 294 A.2d 290, 298 (Conn. 1972). States have chosen to locate that authority in their legislatures because legislatures are best equipped to determine the circumstances under which a State should consent to suit, given that suits may drain the States of scarce monetary resources and threaten "other important needs and worthwhile ends [that] compete for access to the public fisc." *Alden*, 527, U.S., at 751. Indeed, because "allocation

of scarce resources among competing needs and interests lies at the heart of the political process," decisions to surrender the protections of sovereignty likewise "must be reached after deliberation by the political process established by the citizens of the State." *Id.*

The inherent need to allocate responsibilities appropriately between branches of government is particularly compelling in institutional reform litigation. Entering into a consent decree in such cases can reach far beyond the parties to the suit, significantly affecting the State's fisc, available public services, and financial burdens on citizens through increased taxes. Assistant attorneys general and state agency officials should not be permitted, by agreement, to usurp the legislature's key policy-making function. *See* Frank H. Easterbrook, *Justice and Contract in Consent Judgments*, 1987 U. CHI. LEGAL F. 19, 34 (1987) ("If prison officials believe their budget is too small, they may consent to a judgment that requires larger prisons, and then take the judgment to the legislature to obtain the funds."); Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 DUKE L.J. 1265, 1294-95 ("Nominal defendants are sometimes happy to be sued and happier still to lose.").

Accordingly, a State should not be deemed to have consented to suit unless its legislature has determined that such consent promotes the State's interests and reflects its citizens' will. Inferring consent to suit from other sources—such as an assistant attorney general's litigation conduct—would impermissibly "deprive the legislature of the power of judging what the honor and safety of the state may require," which is constitutionally the proper province of the Legislature. *Hans*, 134 U.S., at 21.

D. Limiting a Federal Court's Enforcement Authority to Violations of Federal Law Effectuates the Eleventh Amendment's Jurisdictional Constraints on Federal Power and Does Not Promote Gamesmanship or Impugn the Integrity of Federal Courts.

Equating state officials' agreement to a consent decree with a waiver of the State's Eleventh Amendment immunity from suit would not advance the interests that ordinarily motivate recognition of waivers through voluntary invocations of a federal court's jurisdiction. *See Lapides*, 535 U.S., at 614 ("In large part the rule governing voluntary invocations of federal jurisdiction has rested upon the problems of inconsistency and unfairness that a contrary rule of law would create."). Unlike in *Lapides*, here the circumstances do not support any inference of gamesmanship or forum shopping.

In this case, defendants were involuntarily haled into federal court on federal-law claims. The state-agency defendants invoked Eleventh Amendment immunity and were dismissed from the suit. The state-official defendants also moved to dismiss, but the district court retained jurisdiction over those claims under *Ex parte Young*. Contrary to Frew's assertion, these officials' effort to avoid litigation by settling the case through a consent decree was not an invocation of federal jurisdiction akin to that in *Lapides* (removal), *Gardner* (filing a proof of claim), or *Clark* (intervening). Rather than seeking to get *into* federal court for an adjudication of rights, these state defendants found a way out of defending Frew's federal lawsuit by entering into an agreed decree. As soon as Frew attempted to enforce decree provisions that exceeded federal law, the state officials objected because an official-capacity suit seeking to impose obligations beyond federal law falls outside the *Young* doctrine and, therefore, is barred by the Eleventh Amendment. *See supra* Part I.A. That objection was an assertion of a proper constitutional defense at the first available opportunity.

Nor, as Frew suggests, does it impugn the integrity of federal courts to respect the constitutional constraints on federal power imposed by the Eleventh Amendment and to deny enforcement of provisions in court-ordered decrees that exceed the requirements of federal law.[33] Federal courts routinely vacate or modify consent decrees that no longer serve the legitimate purpose of vindicating supreme federal law. And, to the extent ongoing violations of federal law remain, *Young* continues to afford jurisdiction to remedy those violations. *Young* does not, however, afford perpetual jurisdiction for federal courts to micromanage state programs that do not contravene federal law.

As a result of the state officials' choice to avoid federal litigation and settle Frew's suit, Frew obtained a decree under which the Texas EPSDT program made substantial strides to the significant benefit of the plaintiff class. Those gains are not compromised by recognition that the suit proceeded from the outset under the authority of *Ex parte Young*, and, pursuant to that doctrine, future requests for judicial enforcement of the decree remain dependent on allegations of ongoing violations of federal law.

III. EVEN IF THE COURT DECIDES THAT THE STATE RELINQUISHED ITS ELEVENTH AMENDMENT IMMUNITY, THE STATE RETAINED OTHER INVIOLABLE ATTRIBUTES OF SOVEREIGNTY THAT RESTRICT THE DISTRICT COURT'S ENFORCEMENT POWER.

If the Court decides that the State waived its Eleventh Amendment immunity, the district court nevertheless cannot enforce the decree provisions at issue

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33. Frew asserts that *Ex parte Young*'s jurisdictional limitation will result in state officials "ignor[ing] validly adopted orders." Pet'r Br., at 32. But there has been no suggestion that anybody ignored a court order; rather, the State litigated the enforceability of the court's remedial order because it exceeded the dictates of federal law.

because the state officials' entry into the consent decree did not relinquish the other inviolable aspects of the State's sovereignty. *See Alden*, 527 U.S., at 715 (recognizing the States' "residuary and inviolable sovereignty"); *see also supra* Section II.B.3. Indeed, Frew has advanced only that Eleventh Amendment immunity was surrendered through the consent decree; she has never suggested that all of the attributes of the State's sovereignty were relinquished. *See, e.g.*, Pet'r Br. i. As a sovereign—absent the mandate of the Supremacy Clause and an ongoing violation of federal law—the State should not be subject to the commands of a federal court regarding policy decisions for a social services program that it has been charged with administering.

CONCLUSION

The Court should affirm the judgment of the court of appeals.

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In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

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QUESTION PRESENTED FOR REVIEW

When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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The Arizona Court of Appeals' opinion is reported as *State v. Gant*, 202 Ariz. 240, 43 P.3d 188 (Ariz. App. 2002). Pet. App. A1-A12. The Arizona Supreme Court's order denying review without comment is not reported. Pet. App. B.

STATEMENT OF JURISDICTION

The Arizona Court of Appeals, Division Two, entered its judgment on March 29, 2002. Pet. App. A-1. The Arizona Supreme Court issued its order denying review on September 26, 2002. Pet. App. B. The State of Arizona filed the Petition for Writ of Certiorari in this Court on December 23, 2002, and this Court granted the petition on April 21, 2003. This Court has jurisdiction pursuant to United States Constitution Article III, Section 2; 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

> Section 1. No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Material Facts.

Investigating a report of possible narcotics activity, police officers knocked on the door of Gant's residence. Pet. App. A, at ¶ 3. Gant answered the door and lied to the officers, stating that the resident was not there. *Id.*; J.A. 5, 10, 19, 31. The officers left the residence but returned later that day after learning of an outstanding warrant for Gant's arrest. Pet. App. A, at ¶ 3. When they returned, the officers encountered other individuals on the premises, one of whom had a crack pipe in her purse. *Id.*; J.A. 11-12, 31. Then Gant arrived. Pet. App. A, at ¶ 3. As Gant pulled into the driveway, an officer shined a flashlight into the car, recognizing Gant from the previous contact. *Id.*; J.A. 5, 10-11, 20. While the officer was walking toward the car, Gant got out and started walking toward him. Pet. App. A, at ¶ 3; J.A. 5, 20. The officer called Gant by name, and Gant acknowledged his identity. *Id.* The officer immediately arrested him on the warrant and for driving on a suspended license. Pet. App. A, at ¶ 3; J.A. 5, 20, 30-31. Officers secured Gant in handcuffs in a patrol car and searched the passenger compartment of Gant's car, where

they found a handgun and cocaine that gave rise to charges of unlawful possession of cocaine for sale and of drug paraphernalia. Pet. App. A, at ¶¶ 1, 3; J.A. 5-7, 11.

B. Proceedings Below.

The trial court denied Gant's suppression motion, holding that the police had conducted a lawful search incident to Gant's arrest. Pet. App. A, at ¶ 5. On review of Gant's convictions, the Arizona Court of Appeals reversed, finding *New York v. Belton*, 453 U.S. 454 (1981), inapplicable because Gant "voluntarily – that is, not in response to police direction – stopped his vehicle, exited it, and began to walk away from it." Pet. App. A, at ¶ 9. The court held that the record did not evince any attempt by the police to initiate contact while Gant was in the vehicle, or indicate that Gant had attempted to evade contact, or show that Gant was aware of the police before alighting. *Id.* at ¶ 13.[1]

The court of appeals rejected the State's argument that Gant's recent occupancy of the vehicle justified, without more, the search of the passenger compartment incident to the arrest. Instead, the appellate court held that the trial court had erred in refusing to suppress the evidence because *Belton*, "[b]y its own terms, . . . applies

[1] The operative facts are not in dispute. Although the Arizona Court of Appeals characterized the trial court record as insufficient to meet the State's burden of proving the constitutionality of the warrantless search, the alleged deficiency related solely to the subjective factors that the *Gant* court held dispositive – factors that the State contends are irrelevant: whether the police attempted to make contact before Gant exited the vehicle and whether Gant was aware of the police before he did so.

only when the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile)." *Id.* at ¶ 11 (internal quotations omitted). The court regarded Gant as a "pedestrian" rather than as a recent occupant of the vehicle within the meaning of *Belton* simply because he had exited the vehicle of his own accord before the initial police contact occurred. *Id.* at ¶ 15. The court instead relied on *Chimel v. California*, 395 U.S. 752, 762-63 (1969), in which this Court held that an officer who arrests a person in his home may search incident to the arrest the area within the person's "immediate control," that is, the area within which the person could reach a weapon or destructible evidence. The court concluded that the search was invalid because the passenger compartment of Gant's vehicle was not within Gant's "immediate control" within the meaning of *Chimel* at the time of the arrest. Pet. App. A, at ¶¶ 15-18.

The State's petition for discretionary review by the Arizona Supreme Court was denied without comment, allowing the court of appeals' opinion to stand. Pet. App. B.

SUMMARY OF ARGUMENT

In *New York v. Belton*, the defendant was arrested after exiting his vehicle. This Court upheld a search of the vehicle's passenger compartment, stating that "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous

incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460. This Court grounded its holding on the historic rationales underlying the search-incident-to-arrest doctrine – officer safety and preservation of evidence – and declared that in this "category of cases," the potential dangers to police officers are presumed to exist in every instance. *Id.*

The "initial contact" rule invented by the court below – holding that *Belton* does not apply to a recent occupant of a car unless the arrestee exited the car *after* police contact – places an arbitrary limit on *Belton* that is entirely divorced from, and at war with, *Belton*'s rationale. A recent occupant of a vehicle can just as easily grab a weapon or evidence from the interior of a car whether or not he or she exited the vehicle after police contact. Indeed, the "initial contact" rule compromises police security and surveillance by forcing or encouraging officers to clearly announce their presence to a suspect and/or rapidly approach a suspect's vehicle, when doing so is contrary to sound law enforcement practice. The "initial contact" rule also demands a subjective and unworkable inquiry into an arrestee's motive for exiting a vehicle and fosters greater uncertainty in an area where predictability is of paramount importance.

Rather, *Belton* applies whenever the passenger compartment of a vehicle is – arguably and generally – "within the area into which an arrestee might reach in order to grab a weapon or evidentiary item." Nothing about the common and routine police procedure used in Gant's case – where an arrestee is secured in a nearby police arrest vehicle – removes the arrestee from the scope of *Belton*. The identical factors justifying the search in *Belton* are equally applicable here: the peculiar dangers of

a vehicle stop and arrest, the threat that an arrestee – or other nearby confederates or onlookers – poses in such a situation, the need for a bright-line rule applicable to everyday arrest scenarios, and the lesser privacy interests associated with an automobile.

ARGUMENT

The *Gant* Court Erred In Determining That *Belton* Is Inapplicable When The Initial Police Contact Occurs After The Occupant Has Exited The Vehicle Of His Own Accord.

The court of appeals misconstrued *Belton* by adding subjectivity to the straightforward *Belton* rule. Contrary to the *Gant* court's view, when police arrest the recent occupant of a vehicle outside the vehicle, the arrestee's actual or constructive awareness of the police before exiting the vehicle is irrelevant. The criteria that trigger *Belton*'s implementation are purely objective: when the arrest occurs in close proximity to the individual's occupancy of the vehicle, the police may contemporaneously search the passenger compartment incident to the arrest.

The *Gant* rule contravenes *Belton*'s purposes by requiring police to "signal confrontation" before an individual alights. The requirement is arbitrary because it rests on a false distinction among occupants based on their subjective states of mind, and it is dangerous because signaling confrontation is likely to increase the risk in many instances, particularly in cases like Gant's where the suspect is aware of his criminal status and has a weapon in the automobile. Conducting the arrest outside the automobile achieves the same safety objectives regardless

whether the occupant knows that he is about to be arrested.

Because Gant was a recent occupant within the meaning of *Belton* when he was arrested and the search was contemporaneous with that arrest, the search was valid.

A. Forging A Unique Rule For Automobile Searches Incident To Arrest, *Belton* Extended The *Chimel* "Immediate Area Of Control" Concept To Encompass The Vehicle's Passenger Compartment.

In *Belton*, a police officer stopped a car for speeding, and while the four occupants were in the car he developed probable cause to arrest them for possession of marijuana. 453 U.S. at 455-56. He ordered Belton and the other occupants out of the car, arrested them, and secured them in "four separate areas of the Thruway." *Id.* at 456. He searched each of the four individuals and then returned to the automobile and searched the passenger compartment, finding cocaine in Belton's jacket. *Id.*

This Court upheld the search of the vehicle, holding that, "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460. Although this Court used the term "occupant" in stating its holding, the Court's statement of the facts made clear that Belton was outside the vehicle when he was arrested. *Id.* at 454. The Court's statement of the issue alluded to recent occupancy, and the opinion acknowledged that Belton "*had been* a passenger just before he was arrested." *Id.* at 460, 462 (emphasis added). In other words, the

Court recognized that at the time of Belton's arrest he was no longer an occupant of the vehicle but a recent occupant.

1. *Belton* created a bright-line rule with arrest rather than pre-exit police contact authorizing the search.

The starting point for this Court's analysis in *Belton* was the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Id.* at 457 (citing *Chimel*, 395 U.S. at 763). In *Chimel*, this Court held that an officer who arrests a person in his home may search incident to the arrest the area within the person's "immediate control," that is, the area within which the person could reach a weapon or destructible evidence. 395 U.S. at 763. In *Belton*, the Court noted that lower courts had found no workable definition of the area within the arrestee's immediate control "when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." 453 U.S. at 460. The Court also noted that many courts had struggled with the recurring question "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it.*" *Id.* at 459 (emphasis added). Recognizing that *Chimel* had "established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee," this Court set out to "determine the meaning of *Chimel*'s principles in this particular and problematic [context]." *Id.* at 460 & n.3 (emphasis added).

This Court grounded *Belton* on the historic rationales underlying the search-incident-to-arrest doctrine: officer safety and preservation of evidence. *Id.* at 457-59; *see also Knowles v. Iowa*, 525 U.S. 113, 116-17 (1998); *United States v. Edwards*, 415 U.S. 800, 802-03 (1974); *Chimel*, 395 U.S. at 762-63; *Preston v. United States*, 376 U.S. 364, 367 (1964); *Agnello v. United States*, 269 U.S. 20, 30 (1925). The need to disarm suspects and protect evidence makes it reasonable for police officers to search the person of the arrestee and the area within which he might obtain a weapon or evidentiary items. *Chimel*, 395 U.S. at 766, 768; *cf. Terry v. Ohio*, 392 U.S. 1, 19 (1968) (warrantless search must be justified by the circumstances permitting its initiation).

This Court observed that when "[an] arrestee is [a car's] recent occupant," the passenger compartment is "generally, even if not inevitably, within the area into which [the] arrestee might reach in order to grab a weapon or evidentiary ite[m]." *Belton*, 453 U.S. at 460 (citation and internal quotations omitted). Recognizing and adopting that generalization enabled the Court to "establish the workable rule [that] this category of cases requires." *Id.* This Court's express recognition in *Belton* that automobile searches incident to arrest comprise a category of their own finds support throughout this Court's Fourth Amendment jurisprudence, in which this Court has recognized that persons have a lesser expectation of privacy in automobiles. *See, e.g., Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (car searches intrude much less upon personal privacy and dignity than searches of persons, in light of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*,

471 U.S. 386, 390-92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (car searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). The reduced expectation of privacy in an automobile is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring) (citations omitted), *overruled by United States v. Ross*, 456 U.S. 798 (1982).

Viewing custodial arrests of recent occupants of automobiles as a special "category of cases," this Court specifically rejected case-by-case examination of the reasons supporting a search incident to arrest, deciding instead that the recent occupant's lawful arrest, without more, justifies the search. 453 U.S. at 459-60 (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973)). In *Robinson*, this Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. . . . [A] search incident to the arrest requires no additional justification. . . .
>
> . . . Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the [defendant] or that he did not himself suspect that [the defendant] was armed.

414 U.S. at 235-36; *see Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) ("[W]e have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review.").

Thus, the arrest itself is the triggering mechanism of a vehicle search incident to a recent occupant's arrest, not that the police initiated or attempted to initiate contact before the individual alighted from the vehicle or that any actual danger existed in a particular case. *See Robinson*, 414 U.S. at 235 ("It is the fact of the lawful arrest which establishes the authority to search . . . "). The likelihood that an arrestee will lunge for a weapon in a vehicle he recently occupied does not vary according to the circumstances under which he exited the vehicle. As this Court has emphasized, "[t]he danger to the police officer *flows from the fact of the arrest*, and its attendant proximity, stress, and uncertainty." *Id.* at 234 n.5 (emphasis added); *see also Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Regardless *why* an individual gets out of his car, "the 'bright line' that [this Court] drew in *Belton* clearly authorizes [a search of the car's passenger compartment] *whenever* officers effect a custodial arrest." *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (emphasis added). Under *Belton*, the dangers to police officers and the need to preserve evidence in the vehicle are presumed to exist when officers are arresting the recent occupants of automobiles. 453 U.S. at 461; *Bailey v. State*, 12 P.3d 173, 177 (Wyo. 2000); *cf. Knowles*, 525 U.S. at 116-17 (while the "legitimate and weighty" concerns for officer safety and

the need to preserve evidence justify a search of the vehicle in the case of a custodial arrest, they are insufficient to presumptively justify a search of the vehicle during a routine traffic stop when the occupant merely receives a citation).[3]

2. *Belton*'s bright-line rule minimizes the risks inherent in arresting recent occupants of automobiles.

Belton's bright-line rule permits police officers to arrest a recent occupant outside the vehicle and secure him away from the vehicle before conducting the search. This avoids the greater potential dangers involved in attempting, in the name of *Chimel*, to conduct the arrest and the search while the occupant is in the automobile, which in many instances the police technically would be able to do. *See State v. Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999) ("Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee

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[3] *Knowles* established that *Belton* does not apply when the occupant is cited but not arrested. Because arrest alone triggers a *Belton* search, this Court's decision in *Knowles* is consistent with the State's argument. This Court determined that two of the concerns supporting a vehicle search incident to an arrest – officer safety and the need to preserve evidence – are either absent altogether or are present to a lesser extent in citation situations. *Knowles*, 525 U.S. at 118-19. The Court in *Belton* presumed that those concerns are present in every custodial arrest situation, obviating case-by-case analysis. 453 U.S. at 461; *Bailey*, 12 P.3d at 177. For *Belton* purposes, a citation (as in *Knowles*) is not the functional equivalent of a custodial arrest because only a valid arrest can trigger a *Belton* search. *Knowles* did not modify the *Belton* rule, but simply declined to extend its application beyond custodial arrests. *Bailey*, 12 P.3d at 177; *Polke v. State*, 528 S.E.2d 537, 540 (Ga. App. 2000).

from getting out of the vehicle in order to conduct a valid search."); *State v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992) (same).

Belton's requirement that the search be contemporaneous to the recent occupant's arrest, 453 U.S. at 460, does not preclude law enforcement officers from exercising their judgment to reduce the risks associated with the arrest. *See, e.g., United States v. Doward*, 41 F.3d 789 (1st Cir. 1994). In *Doward*, the arrestee's daughter, herself subject to an outstanding arrest warrant, unexpectedly emerged from the gathering crowd and attempted to intervene during a *Belton* search after the arrestee had been secured in a patrol car. 41 F.3d at 791-93 & n.5. The federal appellate court, rejecting a limitation on *Belton* that would "immerse the courts in second-guessing security decisions made by law enforcement officers in rapidly evolving circumstances," stated that the potential for such unpredictable developments "vindicate[s] the *Belton* rationale." *Id.* at 793 & n.5.

In Gant's case, other individuals on the premises who apparently were associated with Gant's illegal drug activity presented additional risk to the police. Also, because Gant presumably knew of the handgun in his car while the police did not, the situation would have been much more dangerous had the police rushed to the car, arrested Gant before he could alight, and held him there while searching the vehicle.

No procedure eliminates the danger inherent in an arrest. Even arrestees secured in a patrol car, like Gant, can escape and threaten officers or destroy evidence. *See, e.g., Plakas v. Drinski*, 19 F.3d 1143, 1144-45 (7th Cir. 1994) (suspect handcuffed in back seat of squad car

escaped from squad car and later confronted police); *United States v. Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir. 1993) (citing incidents in which handcuffed arrestees killed police officers). But this Court wisely forged a rule in *Belton* that minimizes those dangers, thereby ensuring a much higher degree of safety in arrests effected in close proximity to automobiles. Conducting the arrest outside the automobile achieves the same safety objectives whether or not the occupant exits in response to a police contact.

B. The "Contact-Before-Exit" Rule That *Gant* Adopted Is Untenable Because It Threatens Rather Than Fosters Public Safety And Frustrates *Belton's* Purpose – To Provide A Safe, Bright-Line Standard Procedure For Police To Follow.

1. The *Gant* rule is arbitrary and dangerous.

In concluding that *Belton* applies only where the police signal, warn, or otherwise confront the occupant before he exits the vehicle, the *Gant* court adopted an arbitrary and dangerous limitation. The *Gant* "confrontation" rule contravenes *Belton*'s reasoning and its safety-oriented purposes, blurring the bright-line recent-occupancy test beyond any predictable, consistent applicability and dramatically increasing the dangers inherent in arrests involving occupants of automobiles. The *Gant* decision poses an arbitrary and dangerous dilemma for law enforcement officers: they must decide, in the heat of the moment, whether to somehow "signal confrontation" while the occupant is still in the vehicle or forego a *Belton* search in the event that the occupant alights "unsignaled" or "unconfronted."

This warning requirement fosters gamesmanship. It arbitrarily limits *Belton*, accomplishing nothing beyond giving drivers and passengers a head start to engage in dangerous conduct such as stepping on the accelerator rather than the brake, grabbing a firearm, or destroying evidence. *See Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) ("[W]here the automobile's owner is alerted to police intentions . . . , the motivation to remove evidence from official grasp is heightened."). Recently, a federal appellate court observed, in declining to impose a pre-exit confrontation rule:

> [W]hen encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight. Mandating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others. We decline to require officers to make this choice.

United States v. Thornton, 325 F.3d 189, 195 (4th Cir. 2003).

Not every occupant will respond violently to "signaled confrontation" or engage in a dangerous attempt to flee upon becoming aware of the police, but many will. Police officers in the field cannot be expected to foresee which occupants are so inclined. Every citizen is presumed to know what conduct the criminal laws proscribe. *See Atkins*

v. Parker, 472 U.S. 115, 130 (1985) ("All citizens are presumptively charged with knowledge of the law."). Thus, an occupant who has committed a criminal offense – Gant was wanted on a warrant and had contraband drugs in his car – presumably knows that he is subject to arrest at any time. Under such circumstances, where the individual may well be primed to flee or violently resist arrest, a *Gant*-style warning is not only superfluous but dangerous.

A "contact-before-exit" requirement is also a purely arbitrary limitation because it assumes a false distinction between occupants who are aware of the police and those who are not. Any person subject to arrest while in a car is potentially dangerous, precisely because he presumably knows his status. In Gant's case, the officers knew before Gant alighted that he was subject to arrest, but in many instances the police will not have that information until after the occupant is out of the vehicle. Precipitation or heavily tinted windows, for example, could conceal ongoing illegal activity or a wanted person's identity until he steps out of the vehicle. In terms of public safety, officer safety, and evidence preservation, there is no difference between a driver or passenger whom the police "stop," "contact," "signal," or otherwise challenge while he is still in the vehicle and a person whom the police do not "stop," "contact," "signal," or otherwise challenge until after he gets out of the vehicle, except that "signaling confrontation" may well escalate the risks. For example, a person bent on evading arrest is more likely to emerge brandishing a weapon when forewarned of police officers' presence. Gant had a handgun in his car. The *Gant* pre-exit warning rule does nothing but increase the potential danger to everyone concerned.

This Court should defer to police officers' training and discretion in determining how to conduct an arrest – either by "signaling confrontation" while the individual is in the car or by avoiding doing so until after the person gets out, depending on the circumstances. *See State v. McLendon*, 490 So. 2d 1308, 1309 (Fla. App. 1986) (*Belton* search upheld where undercover officer did not announce his presence until it was safe to arrest murder suspect inside a building, twenty to thirty feet from the door of the suspect's car). To hold otherwise would only foster gamesmanship – ensuring that the occupant has a head start on evasive action.

A police officer cannot know exactly when, why, or at what rate of speed an occupant will exit a vehicle. Consequently, if the *Gant* rule prevails, officers who for whatever reason have not "signaled confrontation" may make an otherwise unnecessary aggressive advance upon a moving or stationary vehicle to prevent the occupants from becoming "pedestrians." *See Wanzek*, 598 N.W.2d at 815; *Gonzalez*, 487 N.W.2d at 572. For example, had the officer arresting Gant anticipated the Arizona appellate court's new "confrontation" rule, he might have raced to Gant's car and held a gun to the window to prevent Gant's exit. In that event, Gant might have used his handgun in response. The *Gant* rule accomplishes nothing but escalated risk.

The legality of a vehicle search incident to a recent occupant's valid arrest should not turn on whether the individual was actually or constructively aware of the police before he exited the vehicle. The *Gant* approach creates the very problems for police and courts that *Belton* sought to avoid. Any "awareness of the police" test is antithetical to undercover police work. The whole idea of

undercover law enforcement activity, particularly arrests by undercover officers, is to avoid announcing the presence of the police before apprehending the offender. It would not be in the public's interest to force undercover officers to elect whether to announce their identity prematurely in compliance with *Gant*'s pre-exit contact rule or to forego a *Belton* search by remaining incognito until they can physically detain the person after he exits the vehicle.

2. The subjective *Gant* approach foments confusion among officers in the field and invites endless suppression-hearing litigation on subjective minutiae that would be irrelevant under an objective, recent-occupancy test.

Even where police officers are in uniform, a rule requiring case-by-case determinations of what prompted an occupant to exit his vehicle is certain to spawn confusion among law enforcement personnel, generate unwarranted mini-trials on subjective factual minutiae, and result in additional inconsistent legal rulings nationwide. In jurisdictions that have espoused the *Gant* rule or a similar rule, trial courts will be burdened with mini-trials on arrestees' and police officers' motivations and their actions in furtherance thereof in virtually every instance in which the government relies on *Belton*. Along with the inevitable inconsistent results, the *Gant* rule will cause substantial additional expenditures of time and resources due to the circumstantial nature of state-of-mind evidence.

This case exemplifies the unworkability and subjective nature of the initial contact rule. Even though the officer shined a flashlight in the window of Gant's car before Gant got out, enabling the officer to recognize

Gant's face through the driver's window, the court of appeals held that Gant was unaware of the police.

No rule or standard of review should be based upon a criminal defendant's after-the-fact averments about his mental processes. *See State v. Medrano*, 914 P.2d 225, 227 (Ariz. 1996) (murder defendant's self-serving testimony about his mental state at the time of the offense was "subject to skepticism"). A rule based on a person's actual or constructive awareness of the police invites litigation concerning an individual defendant's physical or mental condition, including expensive expert testimony on those matters. Disputes will arise concerning vision, hearing, mental acuity, as well as external influences on perception such as intoxication, weather conditions, lighting, ambient noise, and the physical characteristics of the arrestee's vehicle – facts irrelevant under a recent-occupancy analysis.

Police officers' subjective intentions rarely factor into Fourth Amendment analysis. *See Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (objective circumstances of traffic stop allow officer to order driver out of car, "subjective thoughts notwithstanding"); *Whren v. United States*, 517 U.S. 806, 811-13 (1996) (stating that this Court is "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"); *Robinson*, 414 U.S. at 236 & n.7 (availability of "search incident to arrest" for officer safety does not depend on the officer's subjective mind set); *see also Scott v. United States,* 436 U.S. 128, 138 (1978) ("[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long

as the circumstances, viewed objectively, justify that action.").

Police should not be required to memorialize what they intended or attempted to do to get an occupant's attention while the individual was in the car. Nor should officers be required to divine an individual's motivation for exiting the vehicle. When multiple officers are involved, they may not agree on the arrestee's motivation. Further, when a vehicle contains multiple occupants, each individual could assert a different reason for exiting the vehicle, complicating the situation for the police and the courts. Moreover, a rule based on the occupant's state of mind invites dissimulation – pretending to exit the vehicle "voluntarily" although aware of the police.

Instead, officers should focus on the timing and location of the arrest in relation to the arrestee's occupancy of the automobile. Otherwise, the validity of many searches will remain anybody's guess until long after the fact – until trial courts undertake to sort out arrestees' and police officers' motivations and beliefs, and determine, where contested, the precise timing of any "confrontation" warnings vis-a-vis the occupants' exit from their vehicles.

One Arizona Court of Appeals judge, while concurring in *Gant*'s pre-exit "confrontation" rule, acknowledged the difficulties in determining which happened first – the confrontation or the occupant's exit:

> I have some concerns that our ruling today . . . may frustrate [the *Belton* Court's effort to establish a single familiar standard and avoid unnecessary case-by-case litigation] and incorporate unintended nuances into this already complicated Fourth Amendment arena. . . . [T]he fine

> lines that courts may have to draw in this area are problematic.

Gant, Pet. App. A, at ¶ 21 (Pelander, J., concurring).

Indeed, nearly limitless "unintended nuances" would frustrate the police and the courts under *Gant*'s contact-before-exit rule. For example, would an individual who has one foot in the vehicle and one on the ground at the instant of initial police contact be deemed "in" or "out" for purposes of the *Gant* rule? Would that depend on whether some part of his body was still touching the seat? What if he has both feet on the ground but the door is open and he is leaning into the passenger compartment – or just reaching in? What if the door is closed but he is leaning or reaching in the window? Would an arm or hand be enough, or would courts require that all or part of the torso be inside the car? What if the person is sitting on the tailgate of a station wagon or sport utility vehicle but his feet are touching the ground – could he merely stand up to render *Belton* inapplicable? What if the person is standing outside the vehicle but has left the engine running?

What would suffice for the requisite pre-exit police contact? Could it be non-verbal, such as a signal by hand, whistle, or flashlight? Or, because the contact-before-exit rule necessarily depends on the suspect's precise physical location at the time of initial contact, would the initial contact have to reflect the officer's present ability to make immediate physical contact? How would an undercover officer readily accomplish a pre-exit confrontation within the meaning of *Gant*? Under the *Gant* rule, given the endless variations in the facts that Fourth Amendment issues inevitably engender, many suppression hearings on *Belton* searches would become extended mini-trials on

factual minutiae, and the actions of police officers in the field would have no predictable legal consequences.

The Arizona Court of Appeals misconstrued *Belton* by holding it inapplicable because the record failed to show that the police had attempted to "signal confrontation" while Gant was in the car or that Gant was aware of the police before he got out. Instead of the individual's actual or constructive awareness of the police before exiting the vehicle, it is the mere fact that the individual was arrested while he was a recent occupant of the vehicle that justifies a *Belton* search. Gant's uncontested recent occupancy is dispositive under *Belton*. His car was properly searched incident to his arrest because his arrest occurred while he was a recent occupant. For all the foregoing reasons, this Court should reject the *Gant* court's distortion of the *Belton* rule and reverse the Arizona Court of Appeals' decision.

C. The Only Workable Standard For This Category Of Cases Is That The Arrestee's Recent Occupancy Of The Vehicle At The Time Of Arrest Triggers A *Belton* Search, Without Regard To The Arrestee's State Of Mind.

1. This Court intended in *Belton* to articulate a simple, workable standard.

In *Belton*, this Court intended to articulate "a single, familiar standard" that police officers can quickly and consistently apply to the circumstances that confront them: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Belton*, 453 U.S. at 460. In announcing that test, this Court stressed

that Fourth Amendment rules "'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged'" and should not turn upon "'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'" *Id.* at 458 (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 127, 142). This Court sought to articulate a "straightforward rule, easily applied, and predictably enforced." *Belton*, 453 U.S. at 459.

As this Court later observed, citing *Belton*:

> Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made. Courts attempting to strike a reasonable Fourth Amendment balance thus credit the government's side with an essential interest in readily administrable rules.

Atwater, 532 U.S. at 347. A workable standard is essential:

> [T]he protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.

Belton, 453 U.S. at 458 (citation and internal quotations omitted).

2. The only viable test is whether the arrest occurred while the individual was a recent occupant of the vehicle.

To determine whether *Belton* applies in a particular case, the only viable test is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., while he was in close spatio-temporal proximity to his occupancy of the vehicle. Applying that test in *Belton*, this Court determined that Belton's recent occupancy of the vehicle justified the search incident to his arrest:

> [Belton's] jacket was located inside the passenger compartment of the car in which [Belton] *had been* a passenger *just before* he was arrested. The jacket was *thus* within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case.

Id. at 462 (emphasis added); *see also Long*, 463 U.S. at 1035 n.1 & 1049 n.14 (stating that, where an occupant exited the vehicle shortly before the initial police contact, the officers could have searched the car under *Belton* if they had arrested him: "*Belton* clearly authorizes [an automobile] search whenever officers effect a custodial arrest").

A determination of recent occupancy, based on the totality of the circumstances, is neither novel nor difficult. The "totality of the circumstances" concept is a familiar standard that officers in the field can apply in making the recent-occupancy determination. Police officers are trained to assess probable cause to arrest by considering whether

the totality of the circumstances supports a reasonable inference that an individual is engaged in criminal activity. They can easily employ an analogous test when deciding whether to search an arrestee's vehicle under *Belton*. Whether an arrestee is a recent occupant of the vehicle at the time of his arrest is a factual inference to be drawn from the circumstances at hand. *See United States v. Cortez*, 449 U.S. 411, 421-22 (1981) (police officers' professional experience is part of "the whole picture" supporting an inference of possible criminal activity); *Henry v. United States*, 361 U.S. 98, 102 (1959) ("Probable cause [to effect a warrantless arrest] exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed.").

To determine whether an arrestee is a vehicle's recent occupant within the meaning of *Belton*, officers need only reasonably decide based on their training, experience, and the totality of the circumstances whether the arrest occurred in close spatio-temporal proximity to the arrestee's occupancy of the vehicle. The objective material factors will include, for example, the physical distance between the vehicle and the site of arrest, the time that elapsed between the occupant's exit from the vehicle and his arrest, and any statements the individual or other witnesses make concerning the individual's occupancy of the vehicle. In the uncommon instances where more than minimal time and distance are involved, an additional factor may be whether the individual created additional delay or distance from the vehicle by attempting to flee. *See United States v. Arango*, 879 F.2d 1501, 1505-07 (7th Cir. 1989) (*Belton* search upheld where defendant, who had fled from the area of the vehicle, was apprehended approximately one block away).

Gant's case, for example, is a run-of-the-mill *Belton* situation. Like Belton, Gant cannot seriously contest his recent occupancy of the vehicle at the time of arrest. The time and distance between Gant's exit from the vehicle and his arrest were de minimis. *See Thornton*, 325 F.3d at 196 (*Belton* search upheld where, although the record was "not clear as to the precise distance between [the defendant] and his automobile when [the officer] confronted him, the record . . . conclusively show[ed] that [the officer saw the defendant] park and exit his automobile and then approached [him] *within moments*") (emphasis in original). Further, because Gant's state of mind and what the police did or did not do to get his attention in the car are irrelevant, and because concerns for officer safety remain even when an arrestee is secured away from the car, nothing meaningfully distinguishes Gant's case from Belton's. *See Plakas*, 19 F.3d at 1145 (suspect handcuffed in back seat of squad car escaped and confronted police); *Sanders*, 994 F.2d at 210 & n.60 (citing incidents in which handcuffed arrestees killed police officers). Gant's car was properly searched as a contemporaneous incident to his arrest because he was a recent occupant of the car when he was arrested.

Other cases may present more difficult facts. *See, e.g., McLendon*, 490 So. 2d at 1309 (undercover officer waited to announce his presence until it was safe to arrest murder suspect inside a building, twenty to thirty feet from the suspect's car). But the Fourth Amendment's reasonableness requirement will ensure, just as it does in other categories of search and seizure cases, that the police and the courts implement *Belton* in a manner consistent with *Chimel*'s caution that there must be a "rational limitation"

to the scope of searches incident to arrest. *Chimel*, 395 U.S. at 766-67; *see Thornton*, 325 F.3d at 196 ("The conceded close proximity, both temporally and spatially, of [the defendant] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless.").

Admittedly, this Court cannot announce precise boundaries for the recent-occupancy standard, but that does not impair the standard's utility or reasonableness. "No one case . . . is a proper vehicle for identifying the limits of [an] exception." *Oregon v. Kennedy*, 456 U.S. 667, 690 (1982) (Stevens, J., concurring). The value of an overarching standard "lies in [its] capacity for informed application under widely different circumstances without injury to defendants or to the public interest." *Wade v. Hunter*, 336 U.S. 684, 691 (1949). Reasonableness and common sense will establish and preserve rational limitations. *See South Dakota v. Opperman*, 428 U.S. 364, 375 (1976) ("'[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.'" (quoting *Cooper v. California*, 386 U.S. 58, 59 (1967)).

This Court established an objective bright-line rule in *Belton* that can and should be applied in a simple and straightforward fashion, regardless of the suspect's actual or constructive state of mind before getting out of the car. The arrest itself triggers a vehicle search incident to a recent occupant's arrest, not whether the police initiated or attempted to initiate contact before the individual alighted from the vehicle. Applying the *Belton* rule differently would destroy its purposes.

CONCLUSION

For these reasons, the State respectfully requests that this Court apply the objective, recent-occupancy rule it applied in *Belton*, hold that it controls in Gant's case, and reverse and remand the case to the Arizona Court of Appeals with instructions to reinstate Gant's convictions and sentences.

Respectfuly submitted,

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IN THE

Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ of Certiorari to the Arizona Court of Appeals Division Two

BRIEF OF RESPONDENT

CARTER G. PHILLIPS
JACQUELINE GERSON COOPER
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QUESTION PRESENTED

Whether the court below properly concluded that the State failed to satisfy its burden of proving that the warrantless, suspicionless search of the interior of respondent's automobile was justified as a search incident to arrest, when the arrest took place after respondent had voluntarily exited and walked away from his automobile, the State presented no evidence that the interior of the automobile was arguably within respondent's "area of immediate control" at the time of the arrest, and the search took place after the police had handcuffed him and secured him in the back of a police vehicle?

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INTRODUCTION

The briefs of the petitioner and its *amici* are striking for how little attention they devote to the question whether the court below reached the correct result in this case, *i.e.*, whether the court below properly concluded that the State failed to satisfy its burden of proving that the warrantless search of the interior of respondent's vehicle was lawful as a search incident to arrest. These briefs spend little time discussing the facts of this case or the question whether the search in this case was reasonable. Instead, petitioner and its *amici* focus their attack on the test that the court below used to resolve this case, and would apply in future cases. Specifically, petitioner and its *amici* criticize the lower court's formulation of a test that turns on the reasons that the suspect exited the vehicle because such a distinction requires an inquiry into the suspect's subjective awareness of whether police were present.

Petitioner's and its *amici*'s attempt to turn this case into a referendum on the lower court's test is not surprising. That test's focus on the suspect's state of mind is problematic, and respondent acknowledges that it is not the best approach for resolving these Fourth Amendment issues on a prospective basis. But, critically, the Court need not reach the issue of whether the test or reasoning employed by the court below is sound. This Court's role is to review judgments, not correct or critique opinions. Thus, the Court's fundamental task here is to decide whether the court below correctly concluded that the State failed to satisfy its burden of proving the lawfulness of the warrantless search of respondent's vehicle – regardless of the appropriateness of the reasoning employed by the lower court to reach that result.

Petitioner's and its *amici*'s strategy also is not surprising, because when the inquiry is properly focused on the judgment below – rather than on statements in the court's opinion – it

becomes clear that the court below reached the correct result. The facts presented here (to the limited extent that the State developed any facts at the evidentiary hearing before the lower court) reveal an arrest and search scenario that is worlds away from the situation this Court addressed in *New York* v. *Belton*, 453 U.S. 454 (1981). Specifically, it is undisputed that respondent was arrested after he had exited and walked away from his vehicle, and there is no evidence in the record to suggest that he was within reaching distance, or even lunging distance, of any part of the vehicle at the time of the arrest. Respondent was then promptly handcuffed and placed in a police vehicle. Then, and only then, did the police conduct the search. Thus, the exigent circumstances that this Court held are sufficient to justify a warrantless search incident to arrest – a threat to officer safety or the potential for destruction of evidence – either were wholly dissipated at the time of the search, or never existed in the first place. Instead, the car search in this case was conducted under the least exigent circumstances imaginable – while respondent sat handcuffed in the back of a police car parked in a residential driveway in the custody of at least three police officers on the scene. Accordingly, the lower court's judgment that the State failed to prove the lawfulness of the warrantless search is unassailable and should be affirmed.

STATEMENT OF THE CASE

1. On August 25, 1999, officers of the Tucson Police Department investigated a report of possible narcotics activity at a residence in Tucson, Arizona. J.A. 10, 19. Respondent answered the door of the residence and informed the officers that the resident of the home was not in. *Id.* The officers then ran a computer records check on respondent and discovered that he had a suspended driver's license and an outstanding warrant for failure to appear. *Id.* at 20. They left the residence without arresting him on that outstanding warrant. *Id.*

Later in the day, the police officers returned to the residence. J.A. 20. They made contact with a man sitting in the backyard, whom they subsequently arrested on several outstanding warrants. *Id.* at 5, 10. They then made contact with a woman sitting in a vehicle parked in front of the house. *Id.* at 10. The woman consented to a search of the car and the police discovered and seized a crack pipe containing residue pursuant to that search. *Id.* at 10-11.

Respondent then drove up to the residence in a vehicle that one of the officers (Officer Griffith) recognized from their previous encounter. The car pulled into the driveway. J.A. 5, 20. Officer Griffith shined his flashlight into the vehicle and recognized the driver as respondent, the individual who had answered the door earlier in the day. *Id.* As Officer Griffith walked toward the vehicle, respondent got out and walked away from the vehicle. *Id.* Officer Griffith called respondent by name and he voluntarily identified himself. *Id.* Officer Griffith then arrested respondent on the outstanding warrant and for driving with a suspended license. Respondent was handcuffed and placed in the back of a police vehicle. *Id.* at 5, 20-21. A search of respondent's person uncovered $319 in cash, but no weapons or contraband. *Id.* at 11. The officers also seized respondent's car keys. Trial Tr. 9/13/00, at 79.

After respondent was placed in the back of the patrol car, two additional officers (Officers Nolan and Reed) searched respondent's vehicle without obtaining either a search warrant or his consent. J.A. 6, 21. Office Nolan testified at trial that when conducting the search, he looked for "[j]ust anything of evidence as search incident to his arrest." Trial Tr. 9/13/00, at 21.

2. Respondent was indicted for possession of cocaine for sale in violation of Ariz. Rev. Stat. § 13-3408 and for possession of drug paraphernalia in violation of Ariz. Rev. Stat. § 13-3415(A). Respondent filed a motion to suppress the evidence seized from his automobile on the ground that the warrantless search of the vehicle was unlawful because it

was conducted without probable cause or reasonable suspicion and was not properly incident to his arrest. J.A. 4-8. In its response to the motion, the State argued that the warrantless search was lawful under the "automobile exception" to the warrant requirement because the police had probable cause to search the vehicle and, alternatively, because the search had been conducted incident to an arrest. *Id.* at 9-14.

The trial court held a suppression hearing. At this hearing, the State did not introduce *any* evidence or present *any* witnesses. Two police officers were present at the hearing pursuant to the State's subpoena, but the State's attorney elected not to present their testimony or otherwise develop the record. J.A. 19-22. Instead, the judge summarized his understanding of the facts based on the parties' pleadings. *Id.* at 19-21. Both counsel then stipulated to these facts. *Id.* at 21-22.[1] See Pet. Br. 3 n.1 ("The operative facts are not in dispute."). The trial court denied the motion to suppress on the ground that the vehicle search was lawfully incident to respondent's arrest. J.A. 30-32.

After a jury trial, respondent was convicted on both counts. The trial court sentenced him to concurrent prison terms, the longer of which was three years.

3. Respondent appealed his convictions on the ground, *inter alia*, that the trial court erred in denying his motion to suppress evidence. The Arizona Court of Appeals reversed. The court stated at the outset that because warrantless searches are presumptively illegal, the State bears the burden of proving the lawfulness of such searches. Pet. App. A-2.

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[1] Defense counsel agreed that the judge's factual summary was consistent with the facts recited in the motion to suppress, which were drawn from "assertions of facts in the [police] reports." J.A. 21. The state's counsel similarly asserted that he had "no disagreement with the facts" and was "happy to submit, also, on [his] pleading as well." *Id.* at 22.

The court then held that "the state failed to meet its burden of proving that the warrantless search of Gant's vehicle was a lawful search incident to his arrest." *Id.* at A-9. In reaching this conclusion, the court specifically catalogued the numerous gaps in the factual record. *Id.* at A-7 to A-8. Indeed, the court took the unusual step of stating that it was "unfortunate" that the record was not based on witnesses' testimony, admitted evidence, or a written stipulation of facts because the record was silent as to "many of the critical facts that bear upon resolution of the contested issues." *Id.* at A-8. The court reiterated, however, that the State bore the burden of persuasion and therefore had a duty to "ensure[] that the record contains adequate information for judicial decision-making." *Id.*

The court held that *New York* v. *Belton*, 453 U.S. 454 (1981), "does not extend to this situation" because "Gant voluntarily – that is, not in response to police direction – stopped his vehicle, exited it, and began to walk away from it." Pet. App. A-5.[2] In addition, the court stated its agreement with the holdings of other courts that *Belton* did not apply in situations where the arrestee was apprehended outside the vehicle. *Id.* (citing *United States* v. *Strahan*, 984 F.2d 155 (6th Cir. 1993), and *United States* v. *Fafowora*, 865 F.2d 360 (D.C. Cir. 1989)). The court agreed that in these circumstances:

> the twin concerns of officer safety and evidence preservation that justify, at least theoretically, the search-incident-to-arrest exception to the warrant requirement discussed in *Chimel* [v. *California*, 395 U.S. 752 (1969)], disappear because the vehicle's

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[2] The court further held that nothing in the record "shows or suggests" that respondent "had seen officers or any other sign of police activity at the residence . . . either when he arrived at the residence or before he exited his vehicle," and that "the record does not support a finding that Gant was or should have been aware of anyone's approach as he exited his vehicle." Pet. App. A-7.

> passenger compartment is not available to the arrestee at the time the police encounter or arrest the person.

Id. at A-5 to A-6.

The court then stated that:

> *Belton* is limited to the particular factual situation in which it arose. Accordingly, it applies only when "the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile)."

Pet. App. A-6 (omissions in original) (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). Neither the State nor respondent had proposed or advocated this test. Applying these principles to the factual record before it, the court concluded that "the search of Gant's vehicle was outside the scope of *Belton*." *Id.* at A-8.

Having concluded that "the narrow *Belton* exception is inapplicable" (Pet. App. A-8), the court applied the test announced in *Chimel*. In a single sentence, the court considered and rejected the notion that the search was lawful under *Chimel*, finding that "the passenger compartment of [Gant's] vehicle was not within his immediate control at the time of his arrest." *Id.* (internal quotation marks omitted) (quoting *Chimel*, 395 U.S. at 763). The court also rejected the State's alternative argument that the police had probable cause to search the vehicle under the automobile exception to the warrant requirement, citing the "sparsely developed factual record . . . on this issue." *Id.* at A-9.

Judge Pelander specially concurred. He stated that "[b]ased on the record here, the state simply did not carry its burden of establishing the legality of the warrantless search of Gant's vehicle." Pet. App. A-11.

4. The Arizona Supreme Court denied review without comment. Pet. App. B-1.

SUMMARY OF ARGUMENT

The Court's fundamental task in this case, as in all search and seizure cases under the Fourth Amendment, is to determine whether the search at issue was reasonable. Petitioner and its *amici* attempt to divert the Court's attention from that issue and focus it instead on the merits of the subjective awareness test embodied in the court's opinion below to address future cases. This Court, however, sits to review judgments, not correct opinions. Accordingly, the Court need not pass judgment on the reasoning used by the court below, and should decide only whether the court below correctly concluded that the State failed to fulfill its burden of proving that the warrantless search of respondent's vehicle was lawful.

I. Under the Fourth Amendment, warrantless searches are *per se* unreasonable, subject only to a few narrow exceptions that are strictly tied to and justified by the circumstances that give rise to the need to search. *Katz* v. *United States*, 389 U.S. 347, 357 (1967); *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). It is the government's burden to prove the lawfulness of a warrantless search. *United States* v. *Jeffers*, 342 U.S. 48, 51 (1951).

This Court has recognized an exception to the warrant requirement for searches conducted incident to lawful arrests, based on two – and only two – exigency justifications: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." *Knowles* v. *Iowa*, 525 U.S. 113, 116 (1998). Given the inherent and imminent risks that accompany custodial arrests, this Court has held that it would be impractical at best and foolhardy at worst to require police to go through the process of obtaining a warrant prior to any search.

In *Chimel* v. *California*, 395 U.S. 752, 763 (1969), this Court defined the permissible scope of searches conducted incident to arrests as limited to the arrestee's person and "the area 'within his immediate control,' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." In *New York* v. *Belton*, 453 U.S. 454, 460 n.3 (1981), this Court "determine[d] the meaning of *Chimel*'s principles" in the context of vehicle searches conducted incident to arrests. This Court established a bright-line rule in *Belton* to govern the permissible *scope* of vehicle searches conducted incident to lawful arrests: police may search the passenger compartment in its entirety, including open and closed containers, but may not search the trunk. *Id.* at 460. Such vehicle searches may be conducted incident to arrests in two scenarios, both of which are derived from the *Chimel* "area of immediate control" test: (1) when the arrestee is an occupant of the vehicle, and (2) when the arrestee is a recent occupant of the vehicle and the interior compartment of the vehicle is arguably within the arrestee's area of immediate control at the time of the arrest.

II. The holding of the court below was that the State completely failed to prove that the warrantless search of respondent's vehicle was reasonable under the Fourth Amendment. This holding was plainly correct. Indeed, on this record, no other conclusion is possible. Respondent was arrested outside the vehicle, and the State simply failed to introduce any evidence that could permit a finding – as required to affirm the search under *Belton* – that the area within respondent's immediate control at the time of the arrest arguably included the automobile.

The soundness of the court of appeals' ruling is confirmed by the fact that there were no exigent circumstances here that made it impractical for police to obtain a warrant prior to the search. There was no possible evidence in the car to be preserved. Respondent was arrested for driving with a

suspended license and on an outstanding warrant for failure to appear, so the State already had all of the conceivable evidence of these offenses.

The search of respondent's car likewise cannot be justified as having been necessary to protect officer safety. At the time of the arrest, there was no evidence of a threat to officer safety posed by the contents of the car. It is undisputed that respondent was arrested after he exited and walked away from his vehicle. The court of appeals concluded, based on the available evidence, that the passenger compartment was not within respondent's area of immediate control at the time of his arrest. Therefore, as a practical matter, respondent had little or no ability to access a weapon located in his car at the time of his arrest.

In any event, the police had entirely neutralized all realistic safety issues by the time of the search. It is undisputed that respondent was fully secured in handcuffs in the back of a police vehicle before the search took place. Because the police had completely foreclosed respondent's ability to access a weapon in his car, there was no remaining exigency associated with the vehicle. Under these circumstances, the warrantless search was unreasonable.

Petitioner and its *amici* argue that the search was lawful notwithstanding the fact that respondent was handcuffed in a police vehicle, citing numerous lower court decisions upholding such searches. But those decisions cannot be squared either with the principles and reasoning of *Belton* or with any reasonable understanding of the fundamental protections of the Fourth Amendment. Nor do petitioner and its *amici* present any evidence to support their counterintuitive assertion that weapons in arrestees' vehicles present any genuine threat to police officers once the arrestees have been handcuffed and secured in a police vehicle.

III. Principles articulated by this Court in *Chimel* and *Belton* provide the police and courts with all the necessary

guidance to determine whether the search of a vehicle incident to an arrest is reasonable under the Fourth Amendment. Thus, the Court need not consider, and should not adopt, the alternative "spatio-temporal proximity" test proposed by petitioner and its *amici*. This test is at odds with this Court's precedent because (1) it ignores the principle that the reasonableness of a particular search depends on *all* of the facts and circumstances surrounding the search by improperly elevating the plainly *relevant* factors of time and distance to *dispositive* status; and (2) it is wholly untethered to the exigency rationales that justify the search incident to arrest exception. In addition to these constitutional flaws, it also fails to provide a workable rule that will yield consistent results. As a result, the "spatio-temporal proximity" test amounts to little more than a rule of convenience for police officers that would unduly expand the permissible range of vehicle searches conducted incident to arrests such that this "exception" to the warrant requirement would effectively swallow the rule.

ARGUMENT

As in all search and seizure cases under the Fourth Amendment, the Court's fundamental task here is to determine whether the search at issue was reasonable – an inquiry that requires focused attention to all of the facts and circumstances of the particular case. See, *e.g.*, *Sibron* v. *New York*, 392 U.S. 40, 59 (1968) ("The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case."); *South Dakota* v. *Opperman*, 428 U.S. 364, 375 (1976) ("'[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.'") (alteration in original) (quoting *Cooper* v. *California*, 386 U.S. 58, 59 (1967)); *Ohio* v. *Robinette*, 519 U.S. 33, 39 (1996) ("the 'touchstone of the Fourth Amendment is reasonableness,'"

which "is measured in objective terms by examining the totality of the circumstances" in the particular case). The Court's precedents do not invite scrutiny of hypothetical situations or attempts to formulate general principles to govern cases that are not presented to it. Instead, the Court's focus is properly aimed at how the law applies to the precise factual situation presented.

Recognizing that the result reached below was plainly correct – *i.e.*, that there is no argument to be made that the State satisfied its burden of proving that the warrantless search was lawful – petitioner and its *amici* attempt to divert the Court's attention from that issue and focus it instead on the merits of the subjective awareness test embodied in the court's opinion below to address future cases. While this approach is hardly surprising, given the deficiencies in the State's showing, this Court sits to review judgments, not correct opinions. See, *e.g.*, *Schenck* v. *Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 384 n.12 (1997); *Rutan* v. *Republican Party*, 497 U.S. 62, 76 (1990). Thus, whether the particular formulation adopted by the lower court is appropriate is beside the point. The question that this Court must answer is whether the warrantless search of respondent's car was lawful, not whether the reasoning used by the court below was sound. For the reasons that follow, the judgment below was correct.

I. THE FOURTH AMENDMENT PERMITS WARRANTLESS SEARCHES INCIDENT TO ARRESTS ONLY IN LIMITED SITUATIONS THAT PRESENT SPECIFIC EXIGENT CIRCUMSTANCES.

1. The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" and provides that "no Warrants shall issue, but upon probable cause." U.S. Const amend. IV. The Court has interpreted this language to mean that warrantless searches "are *per se*

unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United States*, 389 U.S. 347, 357 (1967) (footnote omitted); see also *Chimel* v. *California*, 395 U.S. 752, 762 (1969) ("the general requirement that a search warrant be obtained is not lightly to be dispensed with"). The warrant requirement protects citizens from unreasonable searches "[b]y requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Arkansas* v. *Sanders*, 442 U.S. 753, 759 (1979) (quoting *Johnson* v. *United States*, 333 U.S. 10, 14 (1948)). Because the warrant requirement protects citizens against fundamental intrusions by the State,[3] there are only a few "jealously and carefully drawn" exceptions to the warrant requirement, *Jones* v. *United States*, 357 U.S. 493, 499 (1958), and these exceptions have been studiously "delineated." *Sanders*, 442 U.S. at 760.

It is the government's burden to prove the lawfulness of a warrantless search, *e.g.*, by proving that one of the exceptions to the warrant requirement clearly applies. *United States* v. *Jeffers*, 342 U.S. 48, 51 (1951) ("[T]he burden is on those seeking the exemption [from the warrant requirement] to show the need for it."); *Sanders*, 442 U.S. at 760; *Coolidge* v. *New Hampshire*, 403 U.S. 443, 455 (1971). See also *McDonald* v. *United States*, 335 U.S. 451, 456 (1948) (there must be "a showing by those who seek exemption [from the warrant requirement] that the exigencies of the situation made that course imperative").

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[3] As this Court has noted, "[t]he [Fourth] Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence" from England. *Chimel*, 395 U.S. at 761.

This Court has recognized an exception to the warrant requirement for searches conducted incident to lawful arrests. Accordingly, this Court has identified two – and only two – rationales for this exception: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." *Knowles* v. *Iowa*, 525 U.S. 113, 116 (1998) (citing cases going back to *Weeks* v. *United States*, 232 U.S. 383, 392 (1914)). See also *United States* v. *Robinson*, 414 U.S. 218, 234 (1973) ("The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial."). Thus, the search incident to arrest exception to the warrant requirement is an exigency-based exception.[4] It is premised on the notion that any custodial arrest inherently presents "danger to the police officer," which "flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty" (*id.* at 234 n.5), and also presents a risk that the suspect will attempt to destroy or conceal evidence. *Id.* at 234. Thus, this Court has held that it would be impractical at best and foolhardy at worst to require police to go through the process of obtaining a warrant prior to any search necessary to find dangerous weapons or to preserve evidence. Accordingly, this Court has held that warrantless searches in arrest scenarios can be permissible under the Fourth Amendment. *Id.* at 235 (a lawful search incident to arrest "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment").

2. This Court addressed the "proper extent" or scope of the search incident to arrest exception in *Chimel*, 395 U.S. at

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[4] *See New York* v. *Belton*, 453 U.S. 454, 457 (1981) (describing the search incident to arrest exception as based on the rationale that "'the exigencies of the situation' may sometimes make exemption from the warrant requirement 'imperative.'") (quoting *McDonald*, 335 U.S. at 456).

762. In *Chimel*, the police executed an arrest warrant at a suspected burglar's home and then (without a search warrant) searched "the entire three-bedroom house, including the attic, the garage, and a small workshop," as well as the contents of drawers. *Id.* at 754. This Court held that the scope of the search was "'unreasonable'" under the Fourth Amendment. *Id.* at 768.

In so holding, the Court established general principles to govern the permissible scope of a search conducted incident to a lawful arrest. As an overarching principle, the Court reiterated its statement from *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968), that "[t]he scope of [a] search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." *Chimel*, 395 U.S. at 762 (internal quotation marks omitted) (alterations in original). It then established two general principles that govern the acceptable scope of each search. First, the Court held that it is "entirely reasonable" under the Fourth Amendment for police to search an arrestee's person in conjunction with a lawful arrest "in order to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and in order to prevent "concealment or destruction" of evidence. *Id.* at 763. Second, the Court held that:

> the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control,' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Id.

In rejecting the argument that the search of Chimel's entire house was "reasonable," the Court stated that the reasonableness of a given search always depends upon the "facts and circumstances" of the particular case, but noted that "those facts and circumstances must be viewed in the light of established Fourth Amendment principles." *Id.* at 765 (internal quotation marks omitted). In this regard, the Court made clear that it adopted the "area of immediate control" limitation on the permissible scope of searches conducted incident to arrests because that boundary ensures that warrantless searches are linked to, and do not go beyond, the two exigency factors that justify the exception to the warrant requirement in the first place. As the Court stated:

> No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items. The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other.

Id. at 766 (footnote omitted).

3. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court addressed the proper application of the exception for a search incident to an arrest to the "recurring factual situation" of vehicle searches. *Id.* at 460. Specifically, the Court undertook to answer the following question: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile in which he was riding?" *Id.* at 455 (emphasis added).

The specific facts and circumstances of *Belton* are important for understanding this Court's holding. In *Belton*, a single state trooper pulled over a speeding vehicle on the New York Thruway. *Id.* The vehicle had four occupants. *Id.* The

officer's inspection of the driver's operating license and the vehicle registration revealed that none of the occupants owned the vehicle or was related to the owner. During the traffic stop, the officer smelled burnt marijuana and noticed an enveloped marked "Supergold" – which the officer associated with marijuana – on the floor of the car. *Id.* at 455-56. The officer then ordered all four men out of the car and placed them under arrest on the shoulder of the Thruway for unlawful possession of marijuana. *Id.* at 456. He then patted down each occupant and "split them up into four separate areas of the Thruway . . . so they would not be in physical touching area of each other." *Id.* (internal quotation marks omitted). The officer, however, had no backup and only one pair of handcuffs.[5] Accordingly, he did not and could not handcuff the occupants, place them in his patrol car, or otherwise secure or restrain them in any way. Nor, being on the shoulder of an interstate highway, did he or could he remove them from the vicinity of the vehicle. Indeed, the officer testified that he and the arrestees were "all in close proximity of the car."[6] After finding marijuana in the "Supergold" envelope, the officer issued *Miranda* warnings and searched each occupant. *Id.* The officer then searched the passenger compartment of the car and found cocaine in the pocket of Belton's jacket, which was in the back seat. *Id.*

In concluding that the search of the car was lawful under the Fourth Amendment as a search incident to arrest, this Court started with *Chimel*, in particular, the principle announced in *Terry* and reiterated in *Chimel* that "'the scope of [a] search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'"

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[5] *See* Joint Appendix at A-55 to A-56, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328) (testimony of state trooper that he had only one set of handcuffs and did not use them on any of the arrestees).

[6] Joint Appendix at A-19, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328); *see also id.* (officer agreeing that he and the arrestees were "[a]ll around the car").

Belton, 453 U.S. at 457 (alteration in original) (quoting *Chimel*, 395 U.S. at 762, (quoting *Terry*, 392 U.S. at 19)). The Court then reaffirmed the "area of immediate control" test announced in *Chimel*, but noted that lower courts had found it difficult to apply in cases concerning "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its *occupants*." *Belton*, 453 U.S. at 457-59 (emphasis added) (citing lower courts cases reaching conflicting results). In particular, this Court acknowledged that lower "courts have found no workable definition of 'the area within the immediate control of the arrestee' *when that area arguably includes the interior of an automobile and the arrestee is its recent occupant*." *Id.* at 460 (emphasis added).

Stressing the importance of a clear standard to guide police and citizens in this "recurring factual situation," the Court observed that the cases addressing such situations "suggest[ed] the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* (second alteration in original) (quoting *Chimel*, 395 U.S. at 763). In order to establish a "workable rule" for this "category of cases," the Court "read *Chimel*'s definition of the limits of the area that may be searched in light of that generalization," and held "that when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* (emphasis added) (footnote omitted). The Court further explained that police may also examine the contents of containers found within the passenger compartment, whether open or closed, because "if the passenger compartment is within reach of the arrestee, so also will containers in it." *Id.* The vehicle's trunk, however, may not be searched. *Id.* at 460 n.4.

The Court emphasized that its holding did "no more than determine the meaning of *Chimel*'s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *Id.* at 460 n.3.

Ultimately, then, *Belton* established a bright-line rule to govern the permissible *scope* of automobile searches conducted incident to lawful arrests: police may search the passenger compartment in its entirety, including open and closed containers, but may not search the trunk. This is a "bright-line" rule that dispenses with the need for fact-specific inquiries in individual cases into whether particular areas of the passenger compartment or particular containers found therein satisfy the *Chimel* "area of immediate control" test. In practical terms, *Belton* teaches that if the Fourth Amendment permits police to search the inside o a car, then they may search all of it, including any containers found therein.

The question becomes when does the Fourth Amendment permit police to search a car incident to an arrest? This Court identified two such situations in *Belton*, both of which are derived from and consistent with the *Chimel* "area of immediate control" test. First, the Court's repeated references to vehicle "occupants," see, *e.g.*, 453 U.S. at 455, 459, 460, make plain that police may search a car incident to a lawful arrest when the arrestee is an "occupant" of the car. Second, the Court established that police may search a car when the "area [within the immediate control of the arrestee] *arguably includes the interior of an automobile* and the arrestee is its *recent occupant*." *Id.* at 460 (emphasis added). The quoted language is the only reference in the *Belton* opinion to an arrestee who is a "recent occupant," and establishes that police may search a car incident to a lawful arrest when an individual is arrested outside a vehicle that he recently occupied, so long as the arrestee's area of immediate control

at the time of the arrest "arguably" includes the passenger compartment of the vehicle. See Pet. Br. 5 ("*Belton* applies whenever the passenger compartment of a vehicle is – arguably and generally – 'within the area into which an arrestee might reach in order to grab a weapon or evidentiary item'").

The question whether the area within the immediate control of an arrestee who is an occupant or recent occupant includes the interior of the automobile, like all reasonableness inquiries under the Fourth Amendment, necessarily requires consideration of all of the facts and circumstances surrounding the search at issue. See *Chimel*, 395 U.S. at 765 ("[t]he recurring questions of the reasonableness of searches" depends upon "the facts and circumstances – the total atmosphere of the case") (internal quotation marks omitted) (alteration in original). As petitioner recognizes, "[t]he 'totality of the circumstances' concept is a familiar standard" to police officers in the field. Pet. Br. 24.

The search in *Belton* itself was upheld because it fell into the second *Belton* category. The four individuals were arrested outside of the vehicle that they had recently occupied, but the Court concluded that items in the passenger compartment were "within the area which we have concluded was 'within the arrestee's immediate control' within the meaning of the *Chimel* case." 453 U.S. at 462. This conclusion finds ample support in the *Belton* record. As shown above, the State of New York presented evidence demonstrating that the four individuals were "all in close proximity . . . around the car" at the time of their arrest (on the side of a busy highway), and none of them was restrained or secured in any way. Joint Appendix at A-19, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328). Given the "close proximity" of the single officer and four arrestees, and the officer's inability to restrain them, any one of the arrestees, if not all of them, could have reached or lunged into the vehicle at any moment to retrieve a weapon or destroy evidence.

That threat was no doubt of immediate concern to the police officer because he knew that one or more of the arrestees likely was under the influence of drugs and he had no effective way to control all four arrestees simultaneously. Under these circumstances, the only way for the police officer to neutralize the threat and protect himself was to search the vehicle and remove any weapons or evidence. Accordingly, the Court understandably concluded in *Belton* that the passenger compartment of the vehicle was within the arrestees' "area of immediate control," and that the warrantless search was justified as a lawful incident to the arrest.

Under these Fourth Amendment principles, the facts of this case (as they were developed by the State below) demonstrate that this case is fundamentally different from *Belton*. Accordingly, the court below properly concluded that the search of respondent's vehicle was not reasonably incident to his arrest.

II. THE COURT BELOW PROPERLY HELD THAT THE STATE FAILED TO SATISFY ITS BURDEN OF PROVING THAT THE WARRANTLESS SEARCH OF RESPONDENT'S VEHICLE WAS LAWFUL AS A SEARCH INCIDENT TO HIS ARREST.

The holding of the court below (as opposed merely to statements in the opinion) was that the State failed to satisfy its burden of proving the legality of the warrantless search of respondent's vehicle. Specifically, the court held that "the state failed to meet its burden of proving that the warrantless search of Gant's vehicle was a lawful search incident to his arrest." Pet. App. A-9. See also *id.* at A-11 ("[T]he state simply did not carry its burden of establishing the legality of the warrantless search of Gant's vehicle.") (Pelander, J.,

specially concurring).[7] In reaching this conclusion, the court emphasized the sparse and incomplete factual record developed by the State at the suppression hearing. In particular, the court noted that the State failed to present evidence concerning "many of the critical facts that bear upon resolution of the contested issues." *Id.* at A-8. The court emphasized that it was the State's duty to "ensure[] that the record contains adequate information for judicial decision-making" because the State bore the "burden of persuasion." *Id.*[8] The lower court's holding – that the sparse factual record proffered by the State did not establish any basis for dispensing with the warrant requirement in this case – is correct, and should be affirmed by this Court.

A. The State Failed To Satisfy Its Burden Of Proving That The Area Within Respondent's Immediate Control At The Time Of His Arrest Included The Interior Of The Automobile.

Chimel and *Belton* establish that in order for a warrantless search of the passenger compartment of an automobile to be lawful under the Fourth Amendment as a search incident to arrest, the State bears the burden of demonstrating that the arrestee either (1) was an occupant of the vehicle at the time of the arrest, or (2) was a recent occupant and "'the area within the immediate control of the arrestee' . . . arguably includes the interior of [the] automobile." *Belton*, 453 U.S. at 460. It is undisputed that respondent exited and walked away from his vehicle prior to his encounter with the police and,

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[7] The court of appeals also held that the State failed to meet its burden of proving that the warrantless search was lawful under the "automobile exception" to the warrant requirement. Pet. App. at A-9. The State does not challenge that ruling here.

[8] The State's assertion that the deficiencies in the record below "related solely to the subjective factors . . . that the State contends are irrelevant," Pet. Br. 3 n.1, is wishful thinking. As demonstrated below, the court of appeals correctly concluded that the warrantless search of respondent's car cannot be sustained based on the poorly developed record in this case.

therefore, was not an occupant at the time of his arrest. Thus, the State must satisfy the second prong of *Belton*.

The court of appeals correctly concluded that the State of Arizona utterly failed to satisfy its burden of proving that the area within respondent's immediate control at the time of his arrest arguably included the interior of his automobile. Indeed, the court did not view this as a close question: it rejected the notion that the "area of immediate control" test was satisfied in a single sentence. See Pet. App. A-8 ("[T]he passenger compartment of [Gant's] vehicle was not within his immediate control at the time of his arrest . . . .") (internal quotation marks omitted) (quoting *Chimel*, 395 U.S. at 793). This conclusion was plainly correct. Indeed, on this record, no other conclusion is possible.

The State simply failed to introduce any evidence that could permit a finding that the area within respondent's immediate control at the time of his arrest arguably included the interior of the automobile. Significantly, the facts that could establish such a finding are among the "critical facts" (Pet. App. A-8) that are absent from this record. For example, the record does not contain any evidence of the distance between respondent and the vehicle at the time of the arrest, or the relative locations of the vehicle, the officer, and respondent.[9] Nor is there any description of the size of the yard or driveway that could provide even a rough idea of these distances and locations. Similarly, the record does not contain any evidence of the locations of the other officers who were present at the scene. Nor does the record establish

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[9] Petitioner glibly asserts that the "distance between Gant's exit from the vehicle and his arrest were de minimis." Pet. Br. 26. The court of appeals, however, specifically rejected the State's similar assertion below that the trial court made implicit factual findings that respondent "had been only a few steps away from the officer when contact occurred." Pet. App. A-7 n.4. The court of appeals noted that "nothing in the trial court's factual summary, nor any reasonable inferences therefrom," supports such an assertion. *Id.*

whether any of the car doors or windows were open, or whether the car doors were locked or unlocked. Accordingly, the State wholly failed to introduce any evidence that could support a finding that respondent would have been able to reach (even by lunging) any part of the vehicle at the time of the arrest, much less reach into the interior. The silence of the record speaks loudly in this case and wholly supports the judgment below. The Court need go no further in affirming that judgment.

B. There Were No Exigent Circumstances That Justified The Warrantless Search Of Respondent's Vehicle.

The soundness of the court of appeals' ruling is confirmed by the fact that there were no exigent circumstances here that made it impractical for police to obtain a warrant prior to the search. Respondent is mindful of this Court's statement in *Robinson*, 414 U.S. at 235 – which it repeated in *Belton*, 453 U.S. at 459 – that the parties need not "litigate[] in each case the issue of whether or not there was present one of the reasons supporting the authority for a search" incident to a lawful arrest.[10] Nevertheless, the two exigency rationales – the need to ensure officer safety and to prevent destruction of evidence – are the sole justifications for the search incident to arrest exception to the warrant requirement, and this Court consistently has adhered to the principle that the scope of a search must be strictly tied to the circumstances which rendered its initiation permissible. *Terry*, 392 U.S. at 19; *Chimel*, 395 U.S. at 762; *Belton*, 453 U.S. at 457. Moreover, the essential purpose of the "area of immediate control" test is to delineate circumstances in which these exigencies exist. See *Chimel*, 395 U.S. at 766 ("No consideration relevant to

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[10] *See also Robinson*, 414 U.S. at 235 (the authority to search incident to arrest, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found").

the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items."). Therefore, it is highly relevant to the reasonableness inquiry in this case that the evidence preservation rationale is wholly inapplicable and that any threat to officer safety had long since dissipated by the time of the search. Simply put, the warrantless search of respondent's car was not justified by exigent circumstances because any exigency that had existed at the time of the arrest was gone by the time of the search.

1. There Was No Possibility That Any Relevant Evidence In The Car Would Be Lost Or Destroyed By Respondent.

Respondent was arrested for driving with a suspended license and on an outstanding warrant for failure to appear. For these offenses, there could not possibly have been a need to preserve evidence that would justify the warrantless search of respondent's car. This Court's decision in *Knowles* v. *Iowa*, 525 U.S. 113 (1998), is precisely on point. The police in *Knowles* searched the defendant's car without a warrant after issuing the defendant a citation for speeding, and that search uncovered marijuana under the driver's seat. *Id.* at 114. This Court rejected the notion that the search could have been justified by the need to discover and preserve evidence:

> Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car.

Id. at 118.

The same is true here. At the time of respondent's arrest for driving with a suspended license and on an outstanding warrant for failure to appear, the State already had all of the

conceivable evidence of these offenses. There simply was no possibility that the car could have contained additional evidence of these offenses. Thus, there was no evidence in the car to be preserved, and none that could have been destroyed. Accordingly, the evidence preservation justification for a warrantless search incident to an arrest is inapplicable here.[11]

2. The Safety Of The Officers Could Not Justify Searching The Car Either At The Time Of The Arrest Or When The Search Occurred.

The search of respondent's car likewise cannot be justified as having been necessary to protect officer safety. To be sure, respondent's arrest, like all custodial arrests, presented a danger to the police that justified a search of *his person*. Such a search was performed in this case and respondent has never contested its lawfulness. That search did not uncover any weapons or contraband. J.A. 11. But the search of respondent's car is a different matter. Respondent was arrested outside of the car, and the record in this case fails to reveal any legitimate threat to officer safety at the time of the arrest that could have justified the search of the car. Moreover, even if a threat to officer safety existed at the time of the arrest, any such threat had been wholly eliminated by the time of the search itself.

a. At the time of respondent's arrest, there was no evidence of a threat to officer safety that justified the search of his car. It is undisputed that respondent was completely outside of and away from the vehicle at the time of his arrest. The court of appeals concluded, based on the available evidence, that "the passenger compartment of [Gant's] vehicle was not within his immediate control at the time of

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[11] The Court in *Knowles* expressly rejected the State's argument that the warrantless search could be justified based on the possibility that the suspect might attempt to destroy evidence of another as yet undetected crime. 525 U.S. at 118.

his arrest," Pet. App. A-8 (internal quotation marks omitted). This conclusion is unassailable, given the State's failure to create any contrary record on this issue. Therefore, as a practical matter, respondent's ability to access a weapon located in his car at the time of his arrest was substantially reduced if not completely eliminated.

The only risk to police at the time of the arrest was that respondent would attempt (and be successful in the attempt) to (1) escape from the armed state trooper who was arresting him and evade the additional officers who were on the scene; (2) return to his car; (3) enter his car; and (4) locate and retrieve a weapon – all before he could be apprehended.[12] Any concern about this sequence of events is too remote to be deemed reasonable. It cannot support a determination that "exigent" circumstances existed that justified dispensing with a warrant.

The court of appeals was correct to consider the facts – which were undisputed in this case – that respondent was arrested outside his vehicle and that he had voluntarily exited the vehicle without any knowledge of a police presence (rather than at the direction of police). See Pet. App. A-7 ("Nothing [in the record] shows or suggests that Gant . . . had seen officers or any other sign of police activity at the residence . . . either when he arrived at the residence or before he exited his vehicle."). Where, as here, it is undisputed that

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[12] Petitioner's assertion that "other individuals on the premises who apparently were associated with Gant's illegal drug activity presented additional risk to the police" (Pet. Br. 13), is not supported by any evidence in the record. Indeed, petitioner did not even introduce any evidence establishing the presence of other persons on the premises, except for a man and woman in the yard who (as far as we can tell from the record) were under arrest by the time of respondent's arrest. J.A. 5, 10-11. Accordingly, while the presence of confederates at the scene of an arrest no doubt can present a danger to police, and therefore is a relevant factor under a totality-of-the-circumstances analysis, there is no evidence of any such danger here that could have justified the warrantless search of respondent's car.

an individual voluntarily exited the vehicle prior to any contact with the police and was arrested some distance away from it, those facts are plainly *relevant* to the question whether the search at issue was reasonable. Common sense must play a role in reasonableness inquiries under the Fourth Amendment. *United States* v. *Rabinowitz*, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting) ("To say that the search must be reasonable is to require some criterion of reason"). Someone arrested at a distance from a vehicle has less (or no) opportunity to grab weapons or destroy evidence as compared to someone arrested inside a vehicle. Similarly, when someone exits and distances himself from a vehicle prior to the arrest without any knowledge that the police are present, common sense dictates that the suspect will be much less likely or able to grab weapons or destroy evidence from the vehicle in conjunction with the arrest than when police have to undertake the inherently risky task of extricating a suspect from the vehicle. See Pet. Br. 16 ("[A] person bent on evading arrest is more likely to emerge brandishing a weapon when forewarned of police officers' presence.").

The court of appeals was correct to consider these undisputed facts in this case. However, respondent does not endorse the court of appeals' attempt to formulate a test for future cases focusing exclusively on the suspect's awareness of police presence and whether or not any such awareness motivated the suspect to exit the vehicle. Such subjective inquiries can present difficult proof problems (although they did not here), and therefore cannot provide the basis for a workable test that can be applied consistently by police officers in the field or by courts to the myriad fact situations that arise in this context.

b. In any event, the police had entirely neutralized all realistic safety issues by the time of the search. It is undisputed that respondent was fully secured in handcuffs in the back of a police vehicle before the search took place. Thus, the police had completely foreclosed respondent's

ability to access a weapon in his car. As a result, the search of the car cannot possibly be characterized as having been necessary to "disarm" him "in order to" take him into custody, *Knowles*, 525 U.S. at 116; *Robinson*, 414 U.S. at 234. At the time of the car search, respondent was "disarmed" and taken "into custody" – his person had been searched for weapons, he had been separated from his vehicle, and he was restrained inside a police vehicle. Under these circumstances, the contents of the vehicle posed no threat to the officers. Since there was no remaining exigency associated with the vehicle, there was no justification for the warrantless search of the vehicle and the search was, therefore, unreasonable.[13]

Petitioner and its *amici* argue that the search of respondent's car was lawful, notwithstanding the fact that he was handcuffed in a police vehicle at the time of the search. Pet. Br. 26; U.S. Br. 22; 15 States Br. 6-7; NAPO Br. 17-25. They contend that this position is consistent with *Belton* and note that numerous lower courts have upheld vehicle searches where the suspect "was arrested, handcuffed, and placed in a

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[13] The United States' odd assertion (U.S. Br. 22) that respondent did not challenge the search on this ground in the courts below is incorrect. Respondent raised precisely this argument in his motion to suppress. J.A. 7 (challenging the search on the ground that because "he was handcuffed and secured in the back of a patrol car when the search was conducted, the area searched was in no way reachable by Mr. Gant"). He also raised this argument before the Arizona Court of Appeals. *See* Appellant's Opening Br. at 17-18, *Arizona* v. *Gant*, 43 P.3d 188 (Az. Ct. App. 2002) (No. 2CA-CR 00-0430) (arguing that the search was "not reasonable because it was not grounded in the foundational rationales for which [the search-incident-to-arrest exception] was created," based on the facts that respondent was "arrested outside of his locked vehicle" and "restrained by handcuffs in the back seat of a police car"). Finally, respondent argued in his opposition to the petition for certiorari that because he was "secured in the back of a police car at the time of the actual search," the search was "not grounded in at least one of the [exigency] rationales" and, therefore, was "not reasonable." Br. In Opp'n 11-12.

squad car at the scene of the arrest before his vehicle was searched." U.S. Br. 22-24; NAPO Br. 20.

To be sure, lower courts have so held. But those decisions cannot be squared either with the principles and reasoning of *Belton* or with any reasonable understanding of the fundamental protections of the Fourth Amendment. This Court's case law interpreting the Fourth Amendment is clear: there are only two exigent justifications for the search-incident-to-arrest exception to the warrant requirement, and searches incident to arrest must be grounded in these justifications. *Belton*, 453 U.S. at 457 ("'the scope of [a] search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible'") (alteration in original) (quoting *Chimel*, 395 U.S. at 762 (quoting *Terry*, 392 U.S. at 19)). Where police have foreclosed an arrestee's access to weapons or evidence in a car by restraining and securing him, they have eliminated all possible exigencies associated with the car that could justify a warrantless search of the vehicle. Fundamentally, the search incident to arrest exception to the warrant requirement exists solely because of the exigent risks, and thus it cannot apply when the particular exigencies that justify it are absent. Cf. *Preston* v. *United States*, 376 U.S. 364, 368 (1964) (car search purportedly conducted incident to an arrest not reasonable under the Fourth Amendment when it occurred at a point where "there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime").

Significantly, the position of petitioner and its *amici* ignores this Court's clear statement in *Belton* that its holding "in no way alter[ed] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." 453 U.S. at 460 n.3. There can be no argument that the passenger compartment of a vehicle falls within the "reaching distance" of an individual who has been taken away from the vehicle, handcuffed, and secured in

a police vehicle. Therefore, petitioner and its *amici* would permit warrantless searches under the guise of *Belton* that could not possibly be permissible under the principles set forth in *Chimel*. In effect, these courts have construed *Belton* as a radical departure from *Chimel* that greatly expanded police authority to conduct warrantless searches by untethering that authority from any reasonable conception of the suspect's "area of immediate control." In addition, this position cannot be reconciled with the fact that *Belton* permits a search of a vehicle's passenger compartment, but not the trunk – a distinction that is wholly arbitrary when the suspect's access to either part of the car is equally foreclosed.

Neither petitioner nor its *amici* address any of the language or logic of *Belton* and *Chimel* which, as demonstrated above, undercut their position. The United States attempts to muster support for this position by citing statements from the *Belton* dissent, but the majority did not address these statements, much less endorse them. See U.S. Br. 24 & n.7.

Petitioner and its *amici* are left to argue that vehicle searches are justified because arrestees "continue to pose a potentially grave threat to law enforcement personnel" even after they are placed in handcuffs in police vehicles. U.S. Br. 25; see also Pet. Br. 13-14, 26; NAPO Br. 21-24. But the anecdotal evidence they cite does not support this utterly counterintuitive proposition. While handcuffs sometimes fail and suspects sometimes escape from police vehicles, neither petitioner nor its *amici* managed to find a single case in which the police came to harm because an escapee *retrieved a weapon from his vehicle.*[14] Indeed, in all of the cases cited by

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[14] The United States cites an incident on January 12, 1998, in which an individual purportedly "free[d] himself," retrieved a rifle from his car and killed a police officer (U.S. Br. 26 n.8), but that individual had not been placed under arrest and was never under police control, much less handcuffed or confined in a police vehicle. F.B.I., U.S. Dep't of Justice, *Uniform Crime Reports: Law Officers Killed and Assaulted* 50 (1998). The United States also refers to an incident on September 28, 2001, in

petitioner and its *amici*, the threat to the officers came from arrestees gaining control of the officer's service weapons, retrieving weapons hidden on their persons, using weapons that did not come from their car, or using no weapons at all. See *United States* v. *Sanders*, 994 F.2d 200, 210 n.60 (5th Cir. 1993) (citing instances in which suspects either gained control of the officers' weapons or retrieved weapons hidden on their persons); *Plakas* v. *Drinski*, 19 F.3d 1143, 1144-46 (7th Cir. 1994) (civil rights suit brought by estate of arrestee who escaped from police vehicle, retrieved a fireplace poker from a nearby house and brandished it at police before being fatally shot by police); *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at *1 (N.D. Tex. May 19, 2003) (arrestee escaped from police vehicle and physically struggled with police without a weapon; arrestee eventually died from wounds inflicted by police during struggle). Taking petitioner's and its *amici*'s reasoning to its logical conclusion, *Plakas* would mean that the police would be authorized to conduct a warrantless search of any nearby house to round up all sharp objects. In sum, petitioner and its *amici* have presented no evidence that weapons in arrestees' vehicles present any genuine threat to police officers once the arrestees have been handcuffed and secured in police vehicles. As a result, if an arrestee is handcuffed and secured in a police vehicle, a warrantless search of the arrestee's vehicle is flatly "unreasonable."

Ultimately, when a suspect is secured in the back of a police vehicle – confined and immobilized – it is neither impractical nor risky for police to go through the process of obtaining a warrant prior to any search. To the contrary, it seems eminently reasonable to require a warrant where, as

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which an arrestee freed himself from his handcuffs, "retrieve[d] a handgun," and killed an officer (U.S. Br. 26 n.8), but in that case, the arrestee used a weapon he had hidden on his person. F.B.I., U.S. Dep't of Justice, *Uniform Crime Reports: Law Officers Killed and Assaulted* 49 (2001).

here, contacting a magistrate and waiting for a ruling presents no particular risk to the officers or anyone else on the scene (particularly since officers who would otherwise conduct the search are free to guard the arrestee or his vehicle instead). In this case, a warrant would have been refused because it is undisputed that the police did not have probable cause to search the car. Thus, interposing a neutral magistrate between the police and respondent would have prevented the search and protected respondent's Fourth Amendment rights.

The reasonableness of requiring a warrant in this case is bolstered by comparing it to the radically different situation presented in *Belton*. In *Belton*, the single officer's safety was in jeopardy throughout the encounter with the four defendants. He was alone on the side of a busy highway with no back-up as he tried to handle four individuals, one or more of whom likely was under the influence of marijuana (given the lingering smell of marijuana and the presence of the "Supergold" wrapper). 453 U.S. at 455-56. These signs of drug activity also raised a reasonable inference that the car in fact contained relevant evidence. The officer did not have the means to handcuff or otherwise secure all the suspects. Nor did he have the space to move the suspects a safe distance from the car. Indeed, the suspects were in close proximity to the car (and the officer) throughout the encounter. It was therefore impossible for the officer to conduct his business while simultaneously monitoring the four unrestrained individuals to prevent them from reaching or lunging to retrieve weapons or evidence from the car. Because the arrestees were unsecured and unsecurable, the only way for the officer to neutralize any threat posed by weapons in the car and to prevent the destruction of evidence was to search the car immediately. In these circumstances, requiring the officer to obtain a warrant prior to the search could have put his life in jeopardy.

This case is a far cry from *Belton*. Petitioner's assertion that this case is a "run-of-the-mill *Belton* situation," Pet. Br.

26, is wishful thinking. Here, it was respondent who was outnumbered, as there were at least three officers at the scene at the time his vehicle was searched. Rather than being dangerously located on the side of a highway, the encounter took place in a residential driveway. All of the evidence of the non-violent, minor traffic offenses had been collected at the time of the arrest. Respondent had calmly walked away from the car before he became aware of the police presence and the police had fully secured him in the back of the police vehicle without incident. Simply put, there was no need for the officers to conduct an immediate search of the car in order to protect themselves, as there plainly was in *Belton*. Accordingly, the officers should have been required to obtain a warrant prior to the search.

At the end of the day, the police officers' search in this case should be seen for what it was: exactly the kind of warrantless exploratory search that the Fourth Amendment was designed to prevent. The testimony of one of the searching officers in this case is telling, as he admitted he was looking for "[j]ust anything of evidence." Trial Tr. 9/13/00, at 21. While suspicionless, exploratory searches often in fact do uncover evidence of crimes, the premise of the Fourth Amendment is that it is better to let evidence go undetected when there is no basis for a warrant and no applicable exception to the warrant requirement than to intrude on an individual's privacy.[15] Respondent suffered such an intrusion in this case.

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[15] Moreover, as a practical matter, police have abundant opportunities to find evidence of other crimes in cars. For example, police can obtain a suspect's consent to a car search (as occurred with the female suspect found at the scene in this case), *Florida* v. *Jimeno*, 500 U.S. 248, 250-51 (1991), conduct inventory searches, *Colorado* v. *Bertine*, 479 U.S. 367, 371-73 (1987), and seize property that is in plain view, *Payton* v. *New York*, 445 U.S. 573, 586-87 (1980). In addition, under the automobile exception to the warrant requirement, police can always search a car immediately if they have probable cause to believe it contains evidence of a crime. *United States* v. *Ross*, 456 U.S. 798 (1982).

III. PETITIONER AND ITS *AMICI* PROPOSE AN UNWORKABLE TEST THAT HAS NO SUPPORT IN PRECEDENT OR PRINCIPLE.

As demonstrated in Sections I and II, *Chimel* and *Belton* define the parameters for when police can conduct a warrantless search of the passenger compartment of a vehicle incident to the arrest of the vehicle's recent occupant. *Chimel* and *Belton* establish that such a search is reasonable under the Fourth Amendment when the State can demonstrate that "'the area within the immediate control of the arrestee' . . . arguably includes the interior of [the] automobile." *Belton*, 453 U.S. at 460. The court below properly determined that the State failed to satisfy its burden of proving that the search of respondent's vehicle satisfied this test, and this Court need go no further to resolve this case. Accordingly, the Court need not consider, and should not adopt, the alternative "spatio-temporal proximity" test suggested by petitioner and its *amici*. This test has no mooring in the precedent of this Court, is unworkable in its application, and would unduly expand the permissible range of car searches conducted incident to arrests such that this "exception" to the warrant requirement would effectively swallow the rule.

Petitioner contends that "the only viable test is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., while he was in close spatio-temporal proximity to his occupancy of the vehicle." Pet. Br. 24. The United States similarly argues that "the officer may search the passenger compartment of the vehicle that the arrestee occupied as a contemporaneous incident of the arrestee's lawful custodial arrest," and asserts that the "contemporaneous-incident standard" is satisfied so long as the arrest and search are not "'so separated in time or by intervening events that the latter cannot fairly be said to have been incident to the former.'" U.S. Br. 4, 27 (quoting *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996)); see also *id.* at 28 ("'close proximity'" is analyzed both

"'temporally and spatially'") (quoting *United States* v. *Thornton*, 325 F.3d 189, 196 (4th Cir. 2003)). See also 15 States Br. 8 & n.3 (asserting that the only "limits" to "*Belton*'s bright-line rule" are "temporal and spatial" ones).

This "spatio-temporal proximity" test amounts to little more than a rule of convenience for police officers that gives them *carte blanche* to conduct searches of vehicles in almost all situations involving the arrest of a recent occupant, even when those situations are entirely divorced from the exigency justifications upon which the search incident to arrest exception rests. Indeed, petitioner and its *amici* come dangerously close to arguing for an automatic right to search cars in all instances of custodial arrest, which turns Fourth Amendment law on its head: Rather than being *per se* unreasonable, warrantless searches of vehicles are presumed to be permissible when a recent occupant is arrested, subject only to the two "limitations" of attenuated time and/or distance. U.S. Br. 26. The time and distance factors, however, are in many cases entirely within the control of the police. As a practical result, therefore, this test would permit warrantless vehicle searches incident to the arrests of recent occupants in the majority – if not the vast majority – of cases. While this result may suit the police,[16] it flies in the face of the core Fourth Amendment principle that warrantless searches are "*per se* unreasonable," *Katz*, 389 U.S. at 357, and that exceptions to the warrant requirement must be "jealously and carefully drawn." *Jones*, 357 U.S. at 499.[17]

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[16] *See* NAPO Br. 1 (stating that police "regularly" search vehicles upon arresting occupants).

[17] Petitioner and its *amici* seize upon language from a footnote in *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983), in support of their position. Pet. Br. 11; U.S. Br. 13-14; 15 States Br. 5. This language, however, was nothing more than *dicta* because *Michigan* v. *Long* did not involve a search conducted in conjunction with a custodial arrest, but rather a protective search for weapons conducted in the absence of an arrest. The Court was neither focused on nor decided any questions about

The "spatio-temporal proximity" test is at odds with this Court's precedent in two significant respects. First, this test ignores the principle that the lawfulness of a particular search is ultimately a question of reasonableness, and that the reasonableness inquiry must encompass all of the facts and circumstances of the individual case. *Sibron*, 392 U.S. at 59; *Opperman*, 428 U.S. at 375; *Robinette*, 519 U.S. at 39. Essentially, this test converts the plainly *relevant* considerations of time and distance into *dispositive* factors, while ignoring all other factors surrounding the arrest. Just two Terms ago, this Court unanimously rejected a lower court's approach of reviewing certain factors in isolation from each other rather than looking at the totality of the circumstances to determine whether police had reasonable suspicion of wrongdoing. *United States* v. *Arvizu*, 534 U.S. 266, 273-74 (2002). Yet, elevating isolated factors (time and distance) above all others is precisely what petitioner and its *amici* propose here.[18]

The analytical weakness of the proposed crabbed approach is perhaps best demonstrated by petitioner's position that the arrest scenario in this case "is a run-of-the-mill *Belton* situation" (Pet. Br. 26), and the United States' position that this case is a "typical scenario[]" that is "clearly encompasse[d]" by *Belton*. U.S. Br. 28. As demonstrated above, see *supra* at 32-33, the two arrest scenarios are starkly different in numerous respects. Only by examining time and

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the permissible scope of warrantless vehicle searches conducted incident to arrests. Moreover, the broad language of the footnote, which is not supported by any citations to *Belton*, simply cannot be squared with the language or logic of either that opinion or its predecessors. *See* Section I, *supra*.

[18] Petitioner characterizes its spatio-temporal test as a "totality of the circumstances" test, but this makes no sense. Pet. Br. 24-25. This test may look at the facts of particular cases, but it does not look at the "totality" of those facts. *See id.* at 20 ("[O]fficers should focus on the timing and location of the arrest in relation to the arrestee's occupancy of the automobile").

distance to the exclusion of all other factors could petitioner and the United States assert that the arrests in this case and in *Belton* are functionally identical, and that the car searches in both cases were reasonable under the Fourth Amendment. Ultimately, a determination of the reasonableness of a warrantless search under the Fourth Amendment cannot be made by resort only to a stopwatch and a measuring tape.

The second constitutional shortcoming with the spatio-temporal test is that it is wholly untethered to the exigency rationales that justify the search incident to arrest exception. Petitioner acknowledges, as it must, that *Belton* "grounded its holding on the historic rationales underlying the search-incident-to-arrest doctrine – officer safety and preservation of evidence." Pet. Br. 5, 9. Yet the spatio-temporal test has no nexus to those justifications because it focuses on time and distance in the abstract, without any consideration of how those facts bear upon the whether the arrestee might obtain weapons or evidence. Indeed, petitioner and its *amici* effectively would abandon the "area of immediate control" test that is the touchstone of *Chimel*, and preserved by *Belton*, even though this Court correctly concluded that warrantless searches have no "point of rational limitation" – *i.e.*, no tie to the exigent circumstances that justify the exception to the warrant requirement – once they are allowed to go beyond this area. *Chimel*, 395 U.S. at 766.

This is not an abstract or theoretical concern. A review of recent cases (many cited with approval by petitioner and its *amici*) demonstrates that there is no logical stopping point to the scope of warrantless car searches, once courts abandon the "area of immediate control" test and the exigency rationales upon which it is grounded. See, *e.g.*, *United States* v. *Arango*, 879 F.2d 1501, 1503, 1506 (7th Cir. 1989) (upholding vehicle search as incident to arrest where suspect was arrested a block away from his vehicle and was returned to his vehicle under the direction and control of police; court reasoned that suspect was again "in proximity to the jeep" and that search was

"'nearly contemporaneous'" to arrest), *cited with approval at* Pet. Br. 25, 15 States Br. 11, and NAPO Br. 23; *United States* v. *McLaughlin*, 170 F.3d 889, 890-92 (9th Cir. 1999) (upholding vehicle search as incident to arrest where the search took place five minutes *after the arrestee was removed from the scene and taken to jail*; court reasoning that "the defendant's arrest, the filling out of the impound paperwork, and the search of his car were all part of a continuous, uninterrupted course of events, all occurring within a relatively brief period of time"), *cited with approval at* U.S. Br. 23 n.6; but see NAPO Br. 24 (acknowledging tension with other decisions);[19] *United States* v. *Patterson*, 65 F.3d 68, 69-71 (7th Cir. 1995) (upholding vehicle search as incident to arrest although officer never observed arrestee, who was working under the hood of his vehicle, inside the vehicle); *Cason* v. *Commonwealth*, 530 S.E.2d 920, 922, 924 (Va. Ct. App. 2000) (upholding moped search as incident to arrest where police never saw suspect on moped, but suspect was carrying a motorcycle helmet and suspect told police that the

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[19] *See also United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996) (upholding warrantless vehicle search as incident to arrest although the search took place after the arrestee was removed from the scene and taken to jail), *cited with approval at* U.S. Br. 19 n.4, 15 States Br. 9-10, NAPO Br. 16; *United States* v. *Johnson*, 114 F.3d 435, 440-41 (4th Cir. 1997) (same); *United States* v. *McCrady*, 774 F.2d 868, 871-72 (8th Cir. 1985) (same).

McLaughlin and these other cases simply cannot be reconciled with *Belton*, or with this Court's pre-*Belton* decisions. *Chambers* v. *Maroney*, 399 U.S. 42, 47 (1970) ("[T]he reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house."); *Preston*, 376 U.S. at 367 ("Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest").

moped was in a yard approximately 50-75 feet away), *cited with approval at* 15 States Br. 13.[20]

In addition to the constitutional flaws with the spatio-temporal test, it also fails to provide a "simple, workable standard" in its application, as petitioner contends. Pet. Br. 22. The spatio-temporal test does not solve line-drawing problems in this area, but instead merely shifts the line-drawing inquiry to issues of time and place. The questions invited by the spatio-temporal test are obvious. Is a search that takes place five minutes after the arrest permissible? Ten minutes? 30 minutes? What about two hours, assuming there are no "intervening" events – whatever that means – between the arrest and the search? Is ten feet close enough to the car? 20? 50? As a result of such line-drawing issues, the spatio-temporal test would not lead to greater certainty or consistent outcomes in this area.

Indeed, when lower courts have considered such questions, they have produced disparate results. For example, in *United States* v. *Vasey*, 834 F.2d 782, 787-88 (9th Cir. 1987), the Ninth Circuit held that a search conducted 30-40 minutes after a suspect was handcuffed and placed in a squad car was not incident to arrest. Other courts, however, have found warrantless searches that took place one-and-one-half hours after the arrest to be "reasonable." *United States* v. *Fiala*, 929 F.2d 285, 288 (7th Cir. 1991). Some courts have permitted warrantless vehicle searches incident to arrest when the suspect was 30 feet from the car at the time of initial contact with the police, *People* v. *Bosnak*, 633 N.E.2d 1322, 1323, 1326 (Ill. App. Ct. 1994), while others have determined that *Belton* did not apply when the suspect was 30 feet from the car. *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993). Still others have permitted car searches incident to

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[20] Indeed, the "spatio-temporal proximity" test arguably would permit police to conduct warrantless vehicle searches when they arrest suspects who were walking towards a car.

arrest when the suspect was 50-75 feet from the vehicle. *Cason*, 530 S.E.2d at 924. This crazy-quilt of results makes plain that focusing on time and distance is anything but a "simple" or "workable" inquiry, and is incapable of yielding consistent outcomes.[21]

In sum, the "spatio-temporal proximity" test is flawed as a matter of constitutional theory and lacks real-world workability. Moreover, if the Court were to adopt this test, the search-incident-to-arrest exception to the warrant requirement would effectively swallow the rule against

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[21] *Amici* 15 States' proposal for fleshing out the application of the spatio-temporal test is even more problematic and less workable. *Amici* propose the following test:

> In order to invoke the *Belton* bright-line rule, it is submitted that the temporal issues could be resolved by resort to the following test: Whether the officer knows *or had reason to know* the arrestee recently exited the vehicle . . . . The spatial issues could be resolved by resort to the following: The arrestee must be spatially proximate to the vehicle at the time of contact with the police or when the arrest is effected. This distance could be viewed as the distance from which the arrestee could reach the vehicle *should he struggle and get away from the police.*"

15 States Br. 8 n.3 (emphasis added).

As for the temporal element, nothing in *Belton* or its predecessors provides a basis for elevating the officer's knowledge of whether the arrestee exited the vehicle to dispositive status, to the exclusion of all other considerations. Clearly, such knowledge has no bearing whatsoever upon either of the exigency justifications. Moreover, by requiring an inquiry into the officer's knowledge, this test would give rise to all of the subjectivity and proof problems that petitioner and its *amici* criticize with respect to a test that relies on the suspect's state of mind. As for the spatial element, defining proximity in terms of whether the defendant could reach the car if he escaped the police is impossibly vague and subjective. It would essentially require an inquiry into the likelihood that the suspect could outrun the police to the vehicle – an inquiry that could only "frustrate the police and the courts." Pet. Br. 21. Moreover, the Fourth Amendment rights of suspects should not turn on their age, physical attributes, or level of physical fitness, as they necessarily would under this test.

warrantless searches. Accordingly, the Court should decline to adopt this proposed test.

CONCLUSION

The judgment of the Arizona Court of Appeals should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari
To The Arizona Court Of Appeals,
Division Two

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SUMMARY OF ARGUMENT

Gant's Brief on the Merits concedes the question presented. He agrees that the "initial contact" rule imposed by the Arizona Court of Appeals is wrong. Because the correctness of that rule was the only question presented and the only issue upon which this Court granted review, this case must be disposed of by reversing the judgment below.

While acknowledging the court of appeals' error, Gant urges the Court to ignore the question presented in this case and find alternative reasons to conclude that the court of appeals reached the correct result. To do so, he relies on a theory that completely misconstrues *New York v. Belton*, 453 U.S. 454 (1981). Gant now argues that *Belton* requires fact-specific inquiries concerning the risks in particular situations to determine whether police officers may search a vehicle incident to the arrest of a recent occupant, when *Belton* specifically rejected that approach. Gant's analysis essentially eviscerates the bright-line rule that this Court adopted in *Belton* and, in doing so, undermines the safety of police officers conducting arrests.

Gant's amici also abandon the court of appeals' decision and, instead, urge the Court to adopt a "seized-in-the-vehicle" test that is unduly limiting and just as problematic, dangerous, and inconsistent with *Belton*'s principles as the rule announced in *State v. Gant*, 43 P.3d 188 (Ariz. App. 2002). Pet. App. A1-A12.

Despite Gant's assertions to the contrary, the operative facts established in the record fully support the search of his vehicle under *Belton:* Gant was lawfully arrested; he was a recent occupant of his vehicle at the time of his arrest; and the search was conducted following that arrest.

This Court should reverse the judgment below and hold that the vehicle search incident to Gant's arrest comports with *Belton*.

ARGUMENT

I. GANT AND HIS AMICI HAVE ABANDONED THE *GANT* RULE, THEREBY CONCEDING THAT THE COURT OF APPEALS' DECISION SHOULD BE REVERSED.

A. The Question Presented Concerns the Validity of the Initial Contact Rule.

There is only one question presented in Arizona's petition for certiorari: whether *Belton* is limited by the initial contact rule imposed by the Arizona Court of Appeals. This question properly focuses on the court of appeals' conclusion that *Belton* "applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant.'" Pet. App. A, at ¶ 11 (quoting *United States v. Hudgins,* 52 F.3d 115, 119 (6th Cir. 1995)). Applying that inappropriate limitation on *Belton*, the court of appeals concluded that "the facts . . . do not show . . . that Gant was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle," and, consequently, the warrantless search of Gant's vehicle was not a lawful search incident to his arrest. *Id.* at ¶ 9.

Based on the holding in the opinion below, the question presented for review in this case is:

> When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Pet. at i.

Gant's own formulation of the question presented in his brief opposing certiorari sought review of the initial contact rule.[1] And in his opposing brief Gant defended the merits of the initial contact rule arguing that "the Arizona Court of Appeals properly held in *State v. Gant* that a *Belton* 'search incident to arrest' was inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact." Resp. Br. in Opp. at 7 (emphasis in original).

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[1] Gant framed the question for review as follows:

> When the police first initiate contact with a defendant after the defendant no longer controls or occupies his vehicle, and the defendant is subsequently arrested, does the U.S. Supreme Court's holding in *New York v. Belton* apply, allowing a full search of the vehicle incident to arrest, or is the search limited by the U.S. Supreme Court's holding in *Chimel v. California*, allowing only a search of the defendant himself and his immediate area?

Resp. Br. in Opp. at ii.

B. Gant Retreats from the Initial Contact Rule.

In his brief on the merits, Gant now expressly disavows the initial contact rule that is the sole question for review before this Court:

> [R]espondent does not endorse the court of appeals' attempt to formulate a test for future cases focusing exclusively on the suspect's awareness of police presence and whether or not any such awareness motivated the suspect to exit the vehicle.

Resp. Br. at 27. Although Gant defended the initial contact rule when opposing certiorari, Resp. Br. in Opp. at 4, 7, 9, 11-12, he now agrees that:

> [s]uch subjective inquiries can present difficult proof problems . . . and therefore cannot provide the basis for a workable test that can be applied consistently by police officers in the field or by courts to the myriad fact situations that arise in this context.

Resp. Br. at 27.

Gant also agrees with the State that "[The *Gant*] test's focus on the suspect's state of mind is problematic," and that "it is not the best approach for resolving these Fourth Amendment issues." *Id.* at 1. Gant attempts to qualify his dramatic retreat by asserting that an arrestee's "voluntary" exit from the vehicle prior to any contact with the police could be "*relevant* to the question whether the search at issue was reasonable." *Id.* at 27 (emphasis in original). Nevertheless, by expressly rejecting the court of appeals' initial contact rule, Gant now agrees with the State that the answer to the question presented to this

Court is "no" – *Belton* is not limited to situations in which the arrestee was actually or constructively aware of the police before getting out of the vehicle he recently occupied.

C. This Court Should Address the Question Presented and Reverse the Judgment Below.

In light of Gant's retreat, he now urges the Court to ignore the question presented. Indeed, he chastises the State and the United States for addressing the question presented, claiming that they are "attempt[ing] to divert the Court's attention," Resp. Br. at 7, 11, because the State and its amici are addressing the very question the Court has decided to review.

Gant urges this Court to bypass the question presented for review because, he argues, the Court can affirm on alternate grounds. *See, e.g.*, Resp. Br. at 1 ("These briefs spend little time discussing the facts of this case or the question whether the search in this case was reasonable."). He notes that the "Court's role is to review judgments, not correct or critique opinions," and argues, "the Court's fundamental task here is to decide whether the court below correctly concluded that the State failed to satisfy its burden of proving the lawfulness of the warrantless search of respondent's vehicle." *Id.*

Gant's arguments that this Court should disregard the question presented for review have no merit. The issue squarely before the Court for review, therefore, is whether the court of appeals correctly determined that *Belton* does not apply when a person is arrested after voluntarily exiting his vehicle. The Court's task is to answer the

question presented, not some other question – even if the answer to another question might be dispositive of the case. *See, e.g., Owasso Indep. Sch. Dist. v. Falvo,* 534 U.S. 426, 431 (2002) ("[I]t is our practice 'to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari.'") (quoting *Bragdon v. Abbott,* 524 U.S. 624, 638 (1998)).

Moreover, the judgment below is that the State's failure to satisfy the initial contact rule is sufficient reason for rejecting the application of *Belton.* That judgment is in error, and in reversing it the Court would be reviewing the judgment below. Gant contends "[t]he question that this Court must answer is whether the warrantless search of respondent's car was lawful." Resp. Br. at 11. But if Gant is correct that an erroneous Fourth Amendment decision must (or should) be left undisturbed unless and until the Court undertakes an overall "lawfulness" analysis, then nearly every Fourth Amendment search case would devolve into precisely the kind of fact-bound case-specific question that the Court generally does not resolve.

The question presented is of national significance. The Court has twice granted certiorari on the issue presented – first in *Florida v. Thomas,* 532 U.S. 774 (2001) (certiorari dismissed as improvidently granted due to jurisdictional defect) – and again here. As the State argued in its petition for certiorari, resolution of the question presented is important for law enforcement and for the lower courts that are addressing these cases.

Because the initial contact rule imposed by the Arizona Court of Appeals is not required for a vehicle search incident to arrest under *Belton,* the Court should reverse the judgment below. Without the improper initial contact

rule, the search is a lawful search incident to arrest under *Belton*.

II. GANT'S PERCEPTION THAT THE FACTS OF THIS CASE ARE INSUFFICIENT TO JUSTIFY SEARCHING HIS CAR INCIDENT TO HIS ARREST RESULTS FROM A FUNDAMENTAL MISUNDERSTANDING OF THE *BELTON* RULE.

Gant urges this Court to affirm the decision below on an alternative basis that is itself just as flawed as the initial contact rule he now abandons. Specifically, he rests his entire argument on the notion that the State failed to introduce enough case-specific factual evidence that an exigency existed in this particular case. Resp. Br. at 8-11, 20-28, 32-33. That notion rests on the egregiously misplaced idea that *Belton* requires such a case-specific factual inquiry, when, in fact, *Belton* expressly rejected that very idea.[2]

[2] As part of Gant's inappropriate fact-specific analysis, he relies on material from outside the record, specifically the joint appendix from the *Belton* litigation. Resp. Br. at 16 & nn.5-6; Resp. Br. at 19. The Court should not consider that material. *See Ramdass v. Angelone*, 530 U.S. 156, 168 (2000) (Kennedy, J.) (plurality opinion) (Supreme Court precedent constitues the principles expressed in the controlling opinion and does not include the briefs and record items in the underlying case).

A. Gant's Retrospective, Fact-intensive Analysis of the Circumstances of His Arrest Misinterprets *Belton* and Undermines the Safety of Police Officers.

1. *Belton* presumes that exigent circumstances exist when a recent occupant of a vehicle is arrested.

Gant contends that the factual record is insufficient because it fails to establish any actual exigency at the time of the arrest or to demonstrate any significant ongoing danger to officers or evidence after Gant had been secured in the patrol car. Resp. Br. at 8-11, 20-28, 32-33. Gant's retrospective, fact-intensive analysis of the circumstances of his arrest is wrong because *Belton* does not require proof of actual, case-specific exigency, either at the time of arrest or during the search of the vehicle after an arrestee is secured. Gant's fact-bound hindsight analysis ignores *Belton*'s presumption of exigency.

Consistent with this Court's Fourth Amendment jurisprudence, *Belton presumes* that exigencies concerning officer safety and evidence preservation exist at the time of an arrest, and requires no individualized, case-specific proof of actual danger to police officers or to evidence:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found on the person of the suspect.

Belton, 453 U.S. at 461 (quoting *United States v. Robinson*, 414 U.S. 218, 235 (1973)). "The danger to the police officer flows from the fact of the arrest, and its attendant proximity,

stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5. Consequently, evidence of case-specific, actual exigency is not required. *Id.*; *Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."); *Bailey v. State*, 12 P.3d 173, 177 (Wyo. 2000) (dangers to officers and evidence are presumed to exist at arrests of recent occupants of automobiles).

2. Gant disregards the dangers that law enforcement officers confront when arresting suspects.

Although Gant acknowledges that exigencies exist whenever the police make an arrest, Resp. Br. at 13, he cavalierly disregards officer safety. He maintains that any genuine, case-specific dangers – including threats posed by confederates and bystanders – can be assessed after the fact, on the cold record, and that simple arithmetic – more officers than arrestees – adds up to no need to search the car. Resp. Br. at 9, 25-27, 33. But as the Court recognized in *Robinson*, the exigencies include not just the known and readily perceptible dangers but also the "uncertainty" of the entire scenario. 414 U.S. at 234 n.5. In the real world, custodial arrests involving vehicles are often chaotic and unpredictable, presenting "legitimate and weighty" concerns for officer safety. *Knowles v. Iowa*, 525 U.S. 113, 116-17 (1998). Hence this Court in *Belton* announced its prospective bright-line rule, which "clearly authorizes [a search of the car's passenger compartment] *whenever* officers effect a custodial arrest." *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (emphasis added).

Gant views *Belton* through the wrong end of the telescope. While *Belton* is a prospective rule designed to

guide police officers in safely arresting the recent occupants of automobiles, Gant's analysis is retrospective, focused on second-guessing the officers' conduct, piecemeal and in hindsight, to determine whether that conduct was justified by actual exigencies. The two approaches are diametrically opposed.

Belton's presumption that exigent circumstances exist when a recent occupant of a vehicle is arrested encourages police officers to secure the arrestee before searching the vehicle rather than attempting to hold the arrestee in or very near the vehicle while conducting a traditional immediate-area-of-control search under *Chimel*.[3] Gant's approach would do the opposite. Gant would permit a search of the vehicle of a recent occupant if officers fail to secure the arrestee away from the vehicle when conducting the search, but would not permit the search when an officer chooses the more sensible practice of securing the arrestee before searching the vehicle. This is an absurd distortion of *Belton*'s effort to craft a "workable rule" for searching a vehicle following the arrest of a recent occupant.

B. Gant's Interpretation of *Belton* Entirely Eviscerates That Holding or Repeats the Court of Appeals' Error.

1. *Belton* forged a bright-line rule.

Belton ensures that arrests involving recent occupants of vehicles are conducted as safely as possible within

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[3] *Chimel v. California*, 395 U.S. 752 (1969).

constitutional parameters, to protect police officers, the arrestee, and the public, and to preserve evidence.[4] The Court in Belton established a bright-line rule, noting that the *Chimel* search-incident-to-arrest rule was "difficult to apply in specific cases" because the rule can become too fact specific:

> A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.

Belton, 453 U.S. at 458 (quotation marks and citation omitted). Thus, concluded the Court, a "familiar standard is essential to guide police officers," for "[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, . . . a policeman [cannot] know the scope of his authority." *Id.* at 458, 459-60.

To avoid the necessity of "requiring the drawing of subtle nuances and hairline distinctions," the Court based its holding in *Belton* not on a case-specific, fact-intensive inquiry about the actual size of the area into which the particular arrestee might grab, but on the *generalization* that *all* recent occupants of vehicles can reach into the

---

[4] As discussed in Petitioner's opening brief, the *Belton* rule is also supported by the reduced expectation of privacy in automobiles generally – diminished even further when the occupant is placed under custodial arrest. *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring) (citations omitted), *overruled by United States v. Ross*, 456 U.S. 798 (1982).

interior of the vehicle – even if, in a particular case, that might not turn out to be correct. *Id.* at 460. This Court recognized that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or evidentiary item." *Id.* Thus, the Court held unequivocally that:

> when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

Id.

2. Gant distorts *Belton*'s bright-line rule.

Gant completely misapprehends *Belton*'s bright-line rule. He contends that it concerns only what portions of the car may be searched, and that the State must still show, on a case-by-case basis, that a particular recent occupant could reach the interior of a car. Resp. Br. at 8, 18-19.

Gant's fragmented perception of *Belton* cannot be squared with *Belton*'s reasoning. According to Gant, half of *Belton* is a bright-line rule (officers can search the entire passenger compartment) and half of *Belton* is an ad hoc, fact-specific, case-by-case analysis (search of the car will be upheld only upon a factually specific showing that the recent occupant could have grabbed something in the interior of the car). Gant's cobbled-together version of *Belton* – half bright-line, half ad hoc – pays no heed to the

Court's own warning that a "familiar standard is essential to guide police officers," for "[w]hen a person cannot know how a court will apply a settled principle to a recurring factual situation, . . . a policeman [cannot] know the scope of his authority." 453 U.S. at 459-60.

Gant necessarily theorizes that this Court, after setting forth a bright-line rule about the scope of a search incident to arrest, promptly flouted its own good advice and imposed a prerequisite case-specifio factual inquiry concerning potential danger. This is so implausible and plainly wrong that Gant does not and cannot point to any court in any jurisdiction that has discussed *Belton* in such terms. Notably, Gant's amici do not share his distorted view. They acknowledge that *Belton*'s bright-line rule includes a presumption of exigency and that it rejects case-by-case assessment of actual danger. ACLU/NACDL Br. at 4-6, 12-14 (arguing that limiting *Belton* to cases where the suspect was "seized in the vehicle" would obviate case-specific determinations of actual exigency and recent occupancy).

At times, Gant also appears to argue that whether a case-by-case, fact-specific showing is required turns upon whether the defendant was in or out of the car when he was arrested. For example, at one point Gant argues unqualifiedly that *Belton*'s reference to the "occupants" of a vehicle "make[s] plain that the police may search a car incident to a lawful arrest." Resp. Br. at 18. But in the very next sentences Gant argues that *Belton*'s "only reference" to a vehicle's "recent occupants" establishes that "police may search a car incident to a lawful arrest" – to which Gant adds the further qualification: "so long as the arrestee's area of immediate control at the time of the arrest 'arguably' includes the passenger compartment of

the vehicle." Resp. Br. at 18-19. Thus, Gant may be advocating that a case-by-case, fact-specific inquiry into a suspect's actual grab area is required only when the suspect was outside the vehicle at the time of the arrest.

If that is what Gant proposes, then the distinction he draws – an arrestee in the car versus an arrestee outside the car – erects a rule almost indistinguishable from the initial contact rule imposed below, which he ostensibly disavows. The proposed rule should be rejected for the same reasons that the initial contact rule should be rejected. It would foster gamesmanship. It might force officers to make their presence known to suspects prematurely or make an arrest at a time when sound police procedures dictate otherwise. And it would be arbitrary because a suspect standing immediately outside a car might grab something inside the vehicle just as easily as could a person inside the car. For all these reasons, thoroughly discussed in the State's briefs in response to the *Gant* court's initial contact rule, Gant's conception of *Belton* is illogical and unworkable.

III. GANT'S AMICI OFFER AN ILLOGICAL, "SEIZED-IN-THE-VEHICLE" STANDARD CONTRARY TO *BELTON* AND JUST AS DANGEROUS AS THE *GANT* RULE.

Gant's amici contend that *Belton* applies only when the arrestee is "seized" while "inside a vehicle." ACLU/NACDL Br. at 4-6, 26-29. The Court should reject the amici's analysis because it: (1) is inconsistent with *Belton*, *Long*, and the Court's Fourth Amendment jurisprudence regarding seizures; (2) tacitly revives the court of appeals' flawed initial contact rule; and (3) fails to offer a logical, workable rule.

As the cornerstone of their proposal, Gant's amici grossly distort the meaning of "seizure" by equating it with the mere presence of police officers. Seizure occurs only when police officers effect some form of official detention. *See, e.g., California v. Hodari D.*, 499 U.S. 621, 629 (1991) (even assuming police made a show of authority enjoining suspect to halt, suspect who did not comply was not "seized" until pursuing officers tackled him); *Michigan v. Chesternut*, 486 U.S. 567, 575-76 (1988) (presence of a police car driving parallel to pedestrian's path, although potentially intimidating, does not, standing alone, constitute seizure); *Florida v. Royer,* 460 U.S. 491, 497 (1983) (plurality opinion) (noting that mere approach by law enforcement officers, identified as such, does not constitute seizure).

Gant's amici, ignoring those precedents in a strained attempt to justify their theory of *Belton*, redefine "seizure" by asserting that the defendant in *Long* was "seized" from the moment that the police stopped to *investigate* his traffic accident. ACLU/NACDL Br. at 25. In other words, according to Gant's amici, Long was "seized" by the mere possibility of detention, because "during any investigative stop, police may detain [a] person against his will." *Id.* But Long's automobile was subject to search under *Belton* because he was a recent occupant when the officers formally arrested him, not because he was automatically "seized" when the officers pulled up at the site of his traffic accident. 463 U.S. at 1035 n.1 & 1049 n.14. Furthermore, if Long was somehow "seized" by the mere presence of the police before he got out of his car, Gant likewise was "seized" by the presence of police officers on his premises, shining a flashlight at his face while he drove up and

parked his car. The attempt to distinguish *Long* from *Belton* and from the facts in Gant's case makes no sense.

By equating "seizure" with the mere presence of or contact with police officers, Gant's amici's proposal amounts to nothing but a camouflaged reprise of the *Gant* court's initial contact or confrontation test – whether police officers made their presence known by some form of contact while the suspect was in the vehicle. Gant's amici declare that "[Long's] ability to exit his vehicle before being ordered to do so by the police did not convert the *confrontation* into a non-seizure." ACLU/NACDL Br. at 25 (emphasis added). If pre-exit "confrontation" is the key to their proposal, then Gant's amici are merely repeating the court of appeals' error.

Even applying the concept of seizure in its correct legal sense, the proposed seized-in-the-vehicle test is unduly narrow. It almost exclusively encompasses semi-custodial situations, such as traffic stops, involving some form of official detention where police have the present ability to arrest the suspect immediately. The proposal fails to contemplate other situations (as in this case and *Long*) in which police arrest recent occupants in close proximity to automobiles. When police officers are acting under cover or lack access to signaling devices such as a patrol car's siren or light bar, a "seizure" rule would require that officers run a footrace to the automobile to prevent the occupant from becoming a "pedestrian" before he could be "seized." The proposed rule, like the *Gant* pre-exit confrontation rule, is dangerous because it encourages risky behavior by police officers and suspects alike. Implementing *Belton* should not be reduced to a game of "tag."

The test that Gant's amici urge would engender nearly limitless "unintended nuances" regarding what "seized *inside a vehicle*" might mean. When would a person be deemed "inside" or "outside" a vehicle at the instant of seizure? Would reaching or leaning in a window or an open door be sufficient, even if both feet were on the ground? Must a suspect be "mostly" inside, or does "inside" mean "completely inside"? Would a person sitting in the bed of a pickup truck be "inside" the truck? The proposed test, even if not merely a restatement of the *Gant* rule, is illogical, unworkable, and inconsistent with the principles of *Belton*.

IV. THE APPROPRIATE TEST IS WHETHER THE ARREST OCCURRED WHILE THE INDIVIDUAL WAS A RECENT OCCUPANT OF THE VEHICLE.

As discussed fully in the State's opening brief, the appropriate test is whether police arrested the individual while he was a recent occupant of the vehicle – in close spatio-temporal proximity to his occupancy of the vehicle. Pet. Br. at 24-27. This Court applied that very test in *Belton*, holding that Belton's jacket, which had remained inside the car, was properly searched along with the rest of the car's passenger compartment because Belton "had been a passenger [in the car] just before he was arrested." 453 U.S. at 462.

Gant's case is a run-of-the-mill *Belton* situation because Gant, like Belton, was a recent occupant of the vehicle at the time of his arrest, and the vehicle was searched immediately after the arrest. The time and distance between Gant's exit from the vehicle ~~and his~~ arrest were de minimis. What Gant thought and what the police did or did not do to get his attention in the car are

irrelevant. Gant's car was properly searched incident to his arrest because he was a recent occupant of the car when he was arrested.

Nevertheless, Gant and his amici complain that the recent-occupancy test is "not a bright-line rule" and that it fails to avoid "line-drawing problems" because it merely shifts the inquiry to issues of time and place outside the automobile. Resp. Br. at 39; ACLU/NACDL Br. at 22. But as the foregoing discussion of Gant's amici's flawed "seized inside the vehicle" test makes clear, recent occupancy is a far less nuance-laden standard.

Belton's recent-occupancy test, unlike the "seized inside the vehicle" test, requires neither a stop-action camera nor a micrometer to determine whether a suspect's body was "inside the vehicle," in whole or part, at the precise instant of seizure. Instead, the recent-occupancy test is one of reasonableness – whether a reasonable person under the circumstances would regard the suspect as a recent occupant of the automobile at the time of his arrest. Indeed, the very lack of stop-action precision for which Gant and his amici fault the recent-occupancy test facilitates its real-world implementation. In *Chesternut*, this Court applied a reasonable person standard to a suspect's perception of police conduct with respect to seizure and explained:

> The test's objective standard – looking to the reasonable man's interpretation of the conduct in question – allows the police to determine *in advance* whether the conduct contemplated will implicate the Fourth Amendment.

486 U.S. at 574 (emphasis added). The same necessarily holds true when the police apply a reasonable person test

to their perception of a suspect's conduct. Employing *Belton*'s recent-occupancy test allows police officers, trained in objectively evaluating the totality of the circumstances, to make a reasonable person's interpretation of the situation and to decide *in advance* (before searching the vehicle) whether the suspect's arrest occurred in close spatial and temporal proximity to his occupancy of the automobile. As this Court stressed in *Belton*:

> [T]he protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination *beforehand* as to whether an invasion of privacy is justified in the interest of law enforcement.

453 U.S. at 458 (emphasis added; internal quotation marks omitted).

In sum, although this Court cannot announce precise boundaries for *Belton*'s recent-occupancy test, reasonableness and common sense will preserve rational limitations within the meaning of the Fourth Amendment. The recent-occupancy test – the only viable standard – is already embodied in *Belton*. This Court should apply that test and reverse the court of appeals' decision.

CONCLUSION

The Court should reverse the judgment below and hold that the search of Gant's vehicle was a valid search incident to arrest. Gant was a recent occupant of the vehicle at the time of his arrest, and the search was contemporaneous with that arrest.

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No. 02-1019

In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

vs.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

PETITIONER'S SUPPLEMENTAL BRIEF ON THE MERITS

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ARGUMENT

The State respectfully submits this Supplemental Brief to inform the Court of a recent Arizona Supreme Court opinion in an unrelated but relevant case: *State v. Dean*, No. CR-02-0427-PR, 2003 WL 22120722 (Ariz. Sept. 15, 2003). App. 1-11.[1] The *Dean* opinion is instructive, but it neither resolves nor moots the matter at hand.

I. THE *DEAN* DECISION.

A few days after the State filed its Reply Brief in the instant case, the Arizona Supreme Court issued its decision in *Dean*. The supreme court, ruling exclusively on federal constitutional grounds, held that the initial-contact rule that the Arizona Court of Appeals announced in *State v. Gant*[2] is not the proper test for determining whether *New York v. Belton*[3] justifies searching a suspect's vehicle incident to his arrest. App. ¶¶ 8 n.1, 27-29.

Donald Dean, aware that the police were following him and attempting to detain him, drove his jeep to his house, parked it in the driveway, and ran into the house. *Id.* ¶ 2. There, he hid in the attic for two hours, resisting arrest. *Id.* ¶¶ 2-3. After finally persuading Dean to descend from the attic, the police arrested him and searched

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[1] United States Supreme Court Rule 25.5 permits a party to file a supplemental brief presenting late authorities, newly enacted legislation, or other intervening matter not available in time to be included in the regular briefing.

[2] 43 P.3d 188 (Ariz. App. 2002); Pet. App. A1-A12.

[3] 453 U.S. 454 (1981).

the jeep, where they discovered evidence that led to drug charges. *Id.* ¶¶ 3-4.

The trial court suppressed the evidence, but the court of appeals reversed, upholding the jeep search as incident to arrest under *Gant* and *Belton*. *Id.* ¶¶ 5-6. The court of appeals expressly declined to allow Dean to circumvent *Belton* by frustrating the officers' attempt to detain him in or near the vehicle. *Id.* ¶ 6. Upon Dean's petition for review, however, the Arizona Supreme Court vacated the court of appeals' decision, finding no support in either *Belton* or *Chimel*[4] for *Gant*'s initial-contact gloss on *Belton*. *Id.* ¶¶ 7, 27. The supreme court held that the trial court had properly suppressed the evidence because Dean was no longer a recent occupant of the vehicle at the time of his arrest. *Id.* ¶¶ 32-34.

II. *DEAN*'S IMPLICATIONS.

Dean's reliance on a recent-occupancy analysis is consistent with the State's argument in the instant case that recent occupancy is the appropriate test under *Belton*. Although the facts in *Dean* did not afford the Arizona Supreme Court the opportunity to address the much more common scenario that Gant's case represents – arrest occurring almost immediately after alighting from the vehicle – the *Dean* court applied the proper test.

Moreover, *Dean* exemplifies what the State has maintained all along: that "reasonableness and common sense will establish and preserve rational limitations" on

[4] *Chimel v. California*, 395 U.S. 752 (1969).

Belton. Pet. Br. at 27. The State had argued that Dean should not be allowed to thwart *Belton* by fleeing from the police and keeping them at bay for an extended period of time. But the Arizona Supreme Court placed a "rational limitation" on *Belton*'s scope by determining that too much time had elapsed between Dean's occupancy of the vehicle and his arrest. *Dean* implicitly cautions that although Arizona's police officers apparently may implement *Belton* on a recent-occupancy basis, they may not implement *Belton* if they delay too long in arresting the suspect after he exits the vehicle.

III. THIS COURT SHOULD GO FORWARD WITH A FULL REVIEW ON THE MERITS.

Dean has pointed Arizona in the right direction by repudiating the unworkable initial-confrontation rule. *Dean* has not, however, resolved the question at hand. This Court should therefore follow through with a full review.

The federal constitutional question of nationwide importance – an issue on which this Court has twice granted certiorari – remains unanswered:

> When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Pet. at i.

Because Dean was aware of the police before exiting his vehicle, the *Dean* court's rejection of the initial-contact

rule did not address cases like Gant's in which the suspect's awareness of the police is contested. Nor did *Dean* address the question whether securing the arrestee in a police car precludes a *Belton* search. The dispositive facts in *Dean* were time and distance from the vehicle at the moment of arrest. Moreover, even though certain language in the *Dean* opinion suggests a probable outcome in future Arizona cases like Gant's, *Dean* does not answer for the States or the country the crucial federal constitutional question that the instant case presents. *Dean* cannot even be said to have laid that question entirely to rest in Arizona. *Dean* is only minimally instructive because its facts are so unusual. At most, *Dean*'s adoption of the recent-occupancy test merely moves Arizona from one camp to another in the nationwide conflict over whether the suspect's state of mind controls *Belton*'s application.

The importance of this case demands a full review. An entrenched split of authority on how *Belton* applies exists throughout the United States. Amici representing the United States, 13 States, and 1,000 organizations comprised of over 230,000 law enforcement officers have requested resolution of this issue. This Court must make clear for the country that *Belton*'s recent-occupancy test controls in cases like *Gant*, where police officers see the suspect exit the car, arrest him moments later, and search the car as a contemporaneous incident of the arrest. Such situations occur "hundreds and even thousands of times a day."[5] This case has been fully briefed, and state and

[5] National Association of Police Organizations' Motion for Leave to File Brief *Amicus Curiae*, at I; *see also* United States Br. at 1 (describing such situations as "commonly recurring").

federal jurisdictions across the country would benefit from further guidance from this Court. *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 426 n.3 (1987) (stating that because the legal issue presented would arise in "hosts of other . . . proceedings," the issue's importance made it "appropriate for [the Court] to address the merits").

The State is seeking this Court's review of the *Gant* judgment, and Gant has defended that judgment on several different grounds. *Dean* changes nothing in the instant litigation. As explained in the State's Reply Brief, Gant and his amici have already disavowed the court of appeals' initiation-of-contact rule. Gant now defends the judgment on an alternative ground: *Belton* requires a showing that actual exigencies involving officer safety and evidence preservation exist in a particular case, and no such exigencies existed in his case. Gant's amici advocate an extreme position: a strict, seized-in-the-vehicle test. The inconsistent positions of Gant and his amici, coupled with the conflicting decisions of lower courts across the country, evince a crying need for this Court to issue a dispositive ruling.

Finally, *Dean* in no way moots the instant case or destroys this Court's jurisdiction to hear it. Even assuming that the Arizona Court of Appeals would be constrained to decide the awareness-of-the-police issue differently in light of *Dean*, Gant's case is not moot. The court of appeals' misinterpretation of *Belton* led that court to vacate Gant's convictions, and the State has a continuing interest in obtaining relief from that judgment: "[S]o long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Bd. of Pardons v. Allen*, 482 U.S. 369, 370 n.1 (1987).

The State has a concrete interest in overturning the *Gant* court's suppression of the evidence of Gant's crimes because, without that evidence, his convictions cannot stand. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 288 (2000) (stating that the city suffered "an ongoing injury" precluding mootness so long as the judgment below prevented the city from enforcing the law); *United States v. Villamonte-Marquez*, 462 U.S. 579, 581 n.2 (1983) (stating that although the charges had been dismissed pursuant to the appellate court's mandate, the case was not moot in the Supreme Court because the indictment had merged into the convictions and sentences). The State's interest is more than sufficient to preclude mootness.

CONCLUSION

The recent *Dean* decision does not resolve the issue presented here and should not affect this Court's decision to review this case on the merits. The Court should undertake a full review, reverse the judgment below, and hold that the search of Gant's vehicle was a valid search incident to arrest.

Respectfully submitted,

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APPENDIX

2003 WL 22120722

___ P.3d ___

**Supreme Court of Arizona,
En Banc.**

**STATE of Arizona, Appellant,
v.
Donald Gene DEAN, Appellee.**

No. CR-02-0427-PR.

Sept. 15, 2003.

Terry Goddard, Attorney General by Randall M. Howe, Chief Counsel, Criminal Appeals Section and Billie A. Rosen, Section Chief Counsel, Drug Enforcement and Violent Crimes Section, Phoenix, Attorneys for Appellant.

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HURWITZ, Justice.

¶ 1 We granted review in this case to address a recurring Fourth Amendment issue – whether the search of an automobile is "incident" to the arrest of a defendant. In this case, the search occurred after the defendant was arrested in a house, some two and one-half hours after he had exited the vehicle. The superior court held that the search violated the Fourth Amendment; the court of appeals reversed. For the reasons below, we hold that the superior court correctly found that the search in this case did not fall within the "search incident to arrest" exception to the Fourth Amendment's warrant requirement.

I.

¶ 2 On February 7, 2001, Phoenix police officers received a tip that Donald Dean, the subject of two felony drug arrest warrants, was residing at a house on East Cholla Street in Phoenix. The police set up surveillance of the house and, at about 6:00 p.m., observed a Jeep Grand Cherokee leaving the residence, driven by a person fitting Dean's description. Several officers followed the Jeep in a marked patrol car; after a short time, the officers activated their overhead lights. Dean, who was in fact driving the Jeep, did not pull over, but instead returned to the East Cholla residence and parked in the driveway. He jumped out of the Jeep, leaving the keys in the ignition, and ran into the garage of the house. One of the officers then took the keys from the Jeep.

¶ 3 The officers on the scene summoned a tactical team from the Phoenix Special Assignment Unit. After obtaining permission from the owner of the house, the tactical team went inside. The team eventually found Dean hiding in the attic, arrested him, and took him to a waiting patrol car.

¶ 4 Dean's arrest occurred approximately two and one-half hours after he fled the Jeep. After Dean was arrested, officers searched the Jeep and discovered methamphetamine in the passenger compartment. Based on this discovery, the police obtained a warrant to search the residence and, in executing that warrant, discovered additional quantities of methamphetamine, marijuana, drug paraphernalia, and weapons. Dean was subsequently charged with possession of equipment or chemicals for the manufacture of dangerous drugs, possession of dangerous drugs for sale, and possession of drug paraphernalia.

¶ 5 Dean filed a motion in the superior court to suppress all evidence seized from the Jeep, alleging unlawful search and seizure. The superior court granted the motion to suppress. The trial court rejected the State's contentions that the vehicle was abandoned and that the search was simply an administrative inventory of the vehicle contents. The superior court also rejected the State's argument that the warrantless search of the Jeep was incident to Dean's arrest, noting that "[t]he arrest took place two and a half hours later at a different location."

¶ 6 The State timely appealed the suppression order pursuant to Arizona Revised Statutes ("A.R.S.") § 13-4032(6) (2001). The court of appeals reversed, holding that the Jeep search fell within the "incident to arrest" exception to the Fourth Amendment's warrant requirement. *State v. Dean,* 203 Ariz. 408, 409 ¶ 1, 55 P.3d 102, 103 (App.2002). The court of appeals reasoned that because the police could have searched the vehicle incident to an arrest if Dean had been apprehended either inside the vehicle or directly outside of it, Dean could not "evade a search by leaving the vehicle before the officers arrest him." *Id.* at 411 ¶ 10, 55 P.3d at 105.

¶ 7 Dean filed a petition for review, and we granted review to address the applicability of the "incident to arrest" exception to the warrant requirement in this situation. We have jurisdiction pursuant to Article 6, Section 5(3) of the Arizona Constitution, Arizona Rule of Criminal Procedure 31.19(c)(3), and A.R.S. §§ 13-4032(6) and -4033(A)(2) (2001).

II.

¶ 8 The Fourth Amendment to the United States Constitution, made applicable to the States through the Due Process Clause of the Fourteenth Amendment, protects against "unreasonable searches and seizures," and provides that search warrants shall be issued only upon "probable cause." U.S. Const. amend. IV. Searches conducted without a judicially approved warrant "are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (internal citations omitted). The State suggests that the warrantless search of Dean's Jeep can be justified by virtue of three of those "exceptions": (1) because the Jeep was "abandoned"; (2) because the search was an administrative "inventory" of its contents; and (3) because the search was "incident" to Dean's arrest.[1]

A.

¶ 9 The State's first two arguments do not require extended discussion. The superior court specifically found that the Jeep, which was parked in the driveway of Dean's residence, was not abandoned. In reviewing an order involving a motion to suppress, we review the facts in the

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[1] While Dean argues that the search in this case violates both the Fourth Amendment and Article 2, Section 8 of the Arizona Constitution, he presents no separate arguments based on the state constitutional provision. We therefore address his claim only under the United States Constitution. *See State v. Nunez,* 167 Ariz. 272, 274 n. 2, 806 P.2d 861, 863 n. 2 (1991).

light most favorable to sustaining the order, and will not disturb the trial court's ruling absent "clear and manifest error." *State v. Hyde,* 186 Ariz. 252, 265, 921 P.2d 655, 668 (1996). *See State v. Jones,* 203 Ariz. 1, 5 ¶ 8, 49 P.3d 273, 277 (2002) ("Clear and manifest error . . . is really shorthand for abuse of discretion."). We find no such error here.

¶ 10 The State's attempt to justify the search as an "inventory" of the Jeep fails on similar grounds. While police have the power to perform a warrantless "administrative" search of an impounded vehicle for "community caretaking functions," *see South Dakota v. Opperman,* 428 U.S. 364, 368, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), such a search must be "routine," and not "a pretext concealing an investigatory police motive." *Id.* at 376. The officer who conducted the search of the Jeep testified at the suppression hearing that his purpose was "to search for evidence." In light of that testimony, the superior court did not err in concluding that the search was not an administrative inventory.[2]

B.

¶ 11 We therefore turn to the only remaining applicable justification for the warrantless search here, the

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[2] Nor does this case involve the so-called "automobile" exception to the warrant requirement of the Fourth Amendment. Under that exception, searches of vehicles may be allowed absent a warrant if the police have "probable cause" to do so. *See Chambers v. Maroney,* 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). The State candidly conceded at oral argument that the record in this case does not establish probable cause for the search of the Jeep, and thus did not argue in this court that the "automobile" exception applies.

"search incident to arrest" exception. In *Chimel v. California,* 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), the Supreme Court explained both this exception and its justifications. *Chimel* involved the arrest of a defendant inside his home and the subsequent warrantless search of the home. The California Supreme Court upheld the search as "incident to a valid arrest." *Id.* at 755. In an opinion by Justice Stewart, the Supreme Court of the United States reversed.

¶ 12 *Chimel* began from the premise that when a search is conducted without a warrant, "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Id.* at 762 (alteration in original) (quoting *Terry v. Ohio,* 392 U.S. 1, 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). When a search is conducted incident to a valid arrest, Justice Stewart explained, two sets of circumstances justify departure from the general warrant requirement:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule.

Id. at 763.

¶ 13 *Chimel* taught that these twin aims of the search incident to arrest exception – officer safety and preservation of evidence – provide "ample justification" for a warrantless search "of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.* The search in *Chimel* was of the defendant's entire house, taking between forty-five minutes and an hour after the arrest. Because the search "went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could be used as evidence against him," the Court held that there was no constitutional justification for departing from the general warrant requirement and that the search was unreasonable under the Fourth Amendment. *Id.* at 768.

C.

¶ 14 Under the rule announced in *Chimel,* determining whether a particular area in which evidence was found was within an arrestee's immediate control required an examination of the facts and circumstances surrounding each arrest. This case-by-case analysis presented a significant burden to courts and police when the arrest occurred in or near an automobile and police had to decide at the time of the arrest which portions of the automobile were within the arrestees immediate control. *Glasco v. Commonwealth,* 257 Va. 433, 513 S.E.2d 137, 143 (Va.1999) (Lacy, J., concurring). In *New York v. Belton,* 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), the Supreme Court recognized the problem, noting that the courts have found no workable definition of the area within the immediate control of the arrestee when that area arguably includes

the interior of an automobile and the arrestee is a recent occupant. *Id.* at 460 (quoting *Chimel,* 395 U.S. at 763). Because a single familiar standard is essential to guide police officers, *id.* at 458 (quoting *Dunaway v. New York,* 442 U.S. 200, 213-14, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979)), the Court undertook in *Belton* to establish such a workable rule. *Id.* at 460.

¶ 15 *Belton* arose from the stop of a speeding vehicle on the New York State Thruway. The police officer stopped the vehicle and, after examining the registration, discovered that none of the four men inside owned the vehicle or was related to its owner. The officer also smelled burnt marijuana and saw an envelope marked Supergold on the floor of the vehicle. He then removed the four individuals from the vehicle, separated them, and searched the vehicle. In the back seat he found a leather jacket belonging to Belton; inside a zipped pocket, the officer discovered cocaine. *Id.* at 455-56.

¶ 16 The New York Court of Appeals held that because there was no danger that the arrestee or his confederates could gain access to the zippered pockets of an unaccessible jacket, *id.* at 456, the search exceeded the scope justified by the twin goals of the *Chimel* exception and was not validly incident to Beltons [sic] arrest. The Supreme Court reversed. Once again writing for the Court, Justice Stewart noted that articles inside the passenger compartment of an automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m]. *Id.* at 460 (quoting *Chimel,* 395 U.S. at 763)). The Court therefore held that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest,

search the passenger compartment of that automobile and any containers found within the passenger compartment. *Id.*

¶ 17 The "bright-line" rule established in *Belton* thus relieved police officers from a case-by-case justification as to whether the entire passenger compartment of a vehicle, as opposed to only a portion of the compartment, was within the "immediate control" of an arrestee who had been a recent occupant of the vehicle. But, although *Belton* provided clear guidance with respect to this *spatial* limitation on the incident to arrest exception in the context of a vehicle search, it did not specifically address a number of other questions. While noting that it was undertaking to provide some clarity as to the scope of a search incident to arrest when the defendant was a "recent occupant" of a vehicle, *id.* at 460, the Court did not undertake to define recent occupancy, other than to note in the case before it that the search occurred immediately after the arrest and that Belton was a passenger in the car "just before he was arrested." *Id.* at 462. And, while stating generally that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area," *id.* at 461, Justice Stewart did not purport to set forth any rule as to where the arrestee must be located in relation to the vehicle at the time of arrest in order to justify a warrantless search of the passenger compartment. Again, this was likely because the defendant in *Belton* was in close proximity to the car at the time of arrest. *See id.* at 456.

¶ 18 Justice Stewart made plain in *Belton,* however, that the Court was not retreating from *Chimel,* but rather simply applying its principles to the particular problem

before it. *See Belton,* 453 U.S. at 460 n. 3 ("[*Belton*] in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests."). Thus, *Belton* carefully distinguished cases such as *United States v. Chadwick,* 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), in which the search of a footlocker occurred an hour after federal agents gained exclusive control of the item and after the defendants were securely in custody, and *Arkansas v. Sanders,* 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979), which involved a suitcase in the trunk of a taxicab and thus not within the defendant's "immediate control." *See Belton,* 453 U.S. at 461-62. In each case, Justice Stewart emphasized, there was no "arguably valid search incident to a lawful custodial arrest." *Id.* at 462.

D.

¶ 19 Because neither *Belton* nor any subsequent Supreme Court case has defined just when a defendant is a sufficiently "recent occupant" of a vehicle so as to allow a search incident to arrest of the vehicle's passenger compartment, state and federal courts have struggled to find a workable definition of the term. One line of cases has focused on the Court's statement in *Belton* that its holding was limited to the "particular and problematic context" before it. *Belton,* 453 U.S. at 460 n. 3. Noting that the police officer in *Belton* had ordered the driver of the vehicle to stop before the arrest occurred, *see id.* at 455, a number of courts have focused on whether the police had initiated contact with the arrestee while he was still in the vehicle.

¶ 20 *United States v. Hudgins,* 52 F.3d 115 (6th Cir.1995), exemplifies this approach. *Hudgins* held that as long as the police officer "initiates contact" with a defendant "by actually confronting the defendant or by signaling confrontation with the defendant, while the defendant is still in the automobile," and the defendant is subsequently arrested, "a search of the automobile's passenger compartment falls within the scope of *Belton* and will be upheld as reasonable." *Id.* at 119. Conversely, if the defendant voluntarily left the automobile and began walking away before the police officer initiated contact, "the case does not fit within *Belton's* bright-line rule, and a case-by-case analysis of the reasonableness of the search under *Chimel* becomes necessary." *Id.*

¶ 21 Under this approach, which views a defendant as a "recent occupant" of a vehicle for purposes of the *Belton* rule only when the police initiated contact when the arrestee was still in the vehicle, state and federal courts have found *Belton* inapplicable when the defendant left the vehicle before such contact, even when the arrest occurred in close proximity to the car. *See, e.g., United States v. Strahan,* 984 F.2d 155 (6th Cir.1993); *United States v. Fafowara,* 865 F.2d 360 (D.C.Cir.1989); *State v. Thomas,* 761 So.2d 1010 (Fla.2000); *People v. Fernegel,* 216 Mich.App. 420, 549 N.W.2d 361 (Mich.Ct.App.1996); *Commonwealth v. Santiago,* 410 Mass. 737, 575 N.E.2d 350 (Mass.1991). Division Two of our court of appeals recently adopted this approach in *State v. Gant,* 202 Ariz. 240, 244-45 ¶ 11, 43 P.3d 188, 192-93 (App.2002), *cert. granted,* ___ U.S. ___, 123 S.Ct. 1784, 155 L.Ed.2d 664 (2003).

¶ 22 In *Gant,* the defendant had arrived in his car at a residence at which police already were present. Recognizing the defendant as someone wanted on an outstanding

warrant and whose license was suspended, an officer arrested him after he exited his vehicle. The officer then searched the vehicle, discovering a weapon and cocaine inside the car.

¶ 23 The superior court held the search lawful as conducted incident to Gant's arrest, but the court of appeals reversed. The court of appeals started from the proposition that the rule announced in *Belton* was limited to the "particular factual situation in which it arose." *Id.* at 244 ¶ 11, 43 P.3d at 192. Because the police officer in *Belton* had initiated contact with the defendant while the defendant was still in the automobile, *Gant* concluded that *Belton* applied only under those circumstances – when "the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile." *Id.* (quoting *Hudgins,* 52 F.3d at 119 (alteration in original)).

¶ 24 In *Gant,* the police officer had not initiated contact while the defendant was still in the vehicle; the defendant drove the vehicle to the home where the officer already was present, and the confrontation first occurred after the defendant left the car. *Id.* at 242-43 ¶ 3, 43 P.3d at 190-91. Applying its interpretation of *Belton,* the court of appeals invalidated the search. *Id.* at 246 ¶ 15, 43 P.3d at 194.

¶ 25 In dictum, *Gant* "emphasize[d] that, when police attempt to initiate contact by either confronting or signaling confrontation, a vehicle's occupant cannot avoid *Belton's* application and create a haven for contraband by simply exiting the vehicle when officers are seen or approach." *Id.* at 244-45 ¶ 11, 43 P.3d at 192-93. Under such

circumstances, *Gant* suggested, the search is incident to an arrest when the suspect is "subsequently arrested." *Id.* at 245 ¶ 11, 43 P.3d at 193.

¶ 26 Adopting the *Gant* dictum, the court of appeals in this case held that the search of the vehicle was incident to Dean's arrest, notwithstanding that the arrest occurred long after he left the vehicle and when he was inside the house, because he fled the vehicle when the police approached after initiating contact:

> Dean cannot evade the search of the Jeep and the discovery of contraband in his vehicle by parking the Jeep and running into a house as soon as he is confronted by a police officer. The search, therefore, was incident to his arrest. . . .

Dean, 203 Ariz. at 412 ¶ 12, 55 P.3d at 106. The court of appeals reasoned that had Dean not fled the car at the approach of the police, he would have been arrested in or near the car, and any subsequent search of the vehicle would then have been plainly incident to the arrest. *Id.* at 412 ¶¶ 11-12, 55 P.3d at 106. Because both the time between Dean's exit of the vehicle and arrest, and his distance from the vehicle at the time of the arrest resulted from Dean's "attempt to evade" police, the court of appeals held that he could not "evade" the warrantless search of the Jeep. *Id.* at 412 ¶ 12, 55 P.3d at 106.

E.

¶ 27 The analytic approach taken by the court of appeals in this case and in *Gant,* under which the applicability of the *Belton* rule turns entirely on whether the police initiated contact with the arrestee while he was still in the vehicle, is not supported by the rationale of either

Belton or *Chimel.* The search incident to arrest exception explicated in *Belton* and *Chimel* was designed to protect officer safety and avoid the destruction of evidence. A suspect arrested next to a vehicle presents the same threat to officer safety and the same potential for destruction of evidence whether or not he was alerted prior to arrest of the police's interest in him. Yet, under the approach *Gant* adopted from *Hudgins* and its progeny, the police would be able to search the entire passenger compartment of the automobile only if they initiate contact with a passenger while the suspect is in the vehicle; in all other cases, the *Chimel* "immediate control" test would apply. It makes no sense to have two different rules applicable to arrests occurring in what is for all relevant intents and purposes the same situation.

¶ 28 Moreover, the singular focus on whether the police initiated contact before the defendant departed the vehicle runs counter to one of the purposes underlying *Belton.* The Supreme Court sought in that case to create a workable definition of the area within the "immediate control" of a recent occupant of a vehicle, both to provide a "familiar standard" to police officers and to avoid case-by-case litigation as to whether the entire passenger compartment, or only a portion thereof, was within the scope of a search incident to arrest. *See Belton,* 453 U.S. at 458-60. But, by defining "recent occupancy" entirely in terms of whether the defendant was formally made aware of the police presence before leaving the vehicle, *Gant* and the opinion below would return the courts to the very sort of

inquiry that *Belton* abjured in every case in which contact was not so initiated before the arrest.[3]

¶ 29 For these reasons, a number of courts have found initiation of contact by the police irrelevant to the determination whether an arrestee was a "recent occupant" of a vehicle under *Belton*. *See, e.g., United States v. Thorton* [sic], 325 F.3d 189, 194-95 (4th Cir.2003); *United States v. Sholala* [sic], 124 F.3d 803, 817 (7th Cir.1997); *Glasco*, 513 S.E.2d at 141-42; *see also Gant*, 202 Ariz. at 244 n. 3, 43 P.3d at 192 n. 3 (recognizing a split in authority and collecting cases rejecting the "initiating contact" construction of *Belton*). We agree with the general analytical approach taken in these decisions. *Belton* made clear that its holding "in no way alters the fundamental principles established in the *Chimel* case." *Belton*, 453 U.S. at 460 n.3. Thus, the appropriate inquiry focuses on the critical factors of *when* and *where* the custodial arrest took place. "[A] search can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." *Stoner v. California*, 376 U.S. 483, 486, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964).

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[3] *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), suggests in dictum that the Supreme Court did not mean to limit *Belton* to cases in which the police initiated contact while the defendant was in the vehicle. That case involved a defendant who met police officers at the scene of an accident, where his vehicle had swerved off the road into a ditch. In that case, in upholding a search of the vehicle under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Court also specifically noted that if the officers had arrested the defendant for various traffic violations, they could have searched the passenger compartment of the car under *Belton*. *Long*, 463 U.S. at 1035 n. 1.

¶ 30 The correct rule, we believe, was stated by the Supreme Court of Virginia in *Glasco.* In upholding a vehicle search as incident to a lawful arrest, the Virginia court stated that a defendant is "a recent occupant of a vehicle within the limits of the *Belton* rule" when he is arrested "in close proximity to the vehicle immediately after the [defendant] exits the automobile." *Glasco,* 513 S.E.2d at 142. While concepts such [sic] a "close proximity" and "immediately after" are of course subject to factual analysis, they directly correspond to the rationales behind the search incident to arrest exception, which is designed to protect officer safety and preserve evidence. At the same time, the *Glasco* test is faithful to the general notions that the Fourth Amendment disfavors warrantless searches and that any exceptions to that general rule are narrowly limited in light of their underlying justifications.

¶ 31 In determining whether a search was "substantially contemporaneous" with an arrest of a recent occupant of a vehicle, the courts have reached a wide variety of results under a broad array of factual circumstances. *Compare, e.g., United States v. Arango,* 879 F.2d 1501, 1504-07 (7th Cir.1989) (upholding a search of a defendant's car as incident to an arrest made of the defendant after he walked nine blocks away from the vehicle), *with United States v. Vasey,* 834 F.2d 782, 787-88 (9th Cir.1987) (invalidating a search of a vehicle occurring thirty to forty-five minutes after the defendant's arrest); *see also United States v. Strahan,* 984 F.2d 155, 159 (6th Cir.1993) (holding that an arrestee was not a "recent occupant" of a vehicle when arrested thirty feet from the vehicle); *People v. Saverda,* 907 P.2d 596, 599 (Col.1995) (holding an arrestee to be a "recent occupant," despite a five-minute lapse in time between the arrestee exiting the vehicle and

the subsequent search); *Gauldin v. State,* 683 S.W.2d 411, 414 (Tex.Crim.App.1984) (holding that defendant who had parked truck and was sitting inside a restaurant when confronted by police was not a "recent occupant" of a truck); *State v. Vanderhorst,* 419 So.2d 762, 764 (Fla.Dist.Ct.App.1982) (finding defendant no longer a recent occupant where he had left his car, walked three miles home, requested a ride back to the car, and was attempting to rescue the car when police arrived). But we have been able to discover no case, and the State has cited none, in which a search of the passenger compartment of a vehicle was upheld under *Belton* when the driver was arrested as long after he left the vehicle *and* as far from vehicle as was the defendant here.

¶ 32 Under any reasoned analysis, Dean simply was not a "recent occupant" of the Jeep for *Belton* purposes when he was arrested. He had not occupied the vehicle for some two and one-half hours, and his arrest occurred not in close proximity to the car, but instead inside the house. Under the circumstances of this case, neither of the justifications for a warrantless search of the vehicle – protection of the arresting officers and preservation of evidence – is present.

¶ 33 While the bright-line rule announced in *Belton* relieves the police of demonstrating that a particular portion of the passenger compartment is within the "immediate control" of an arrestee, it does not purport to dispense with all such analysis as to whether the police may search the vehicle at all. Here, given the physical distance of the arrestee from the vehicle at the time of arrest and the long lapse of time between the arrest and Dean's exit from the vehicle, the search simply cannot be

characterized as "incident" to the arrest and excepted from the general requirement that a warrant be obtained.

¶ 34 We therefore hold that when, as here, the arrest occurs long after the defendant had left the vehicle and far from the vehicle, the warrant requirement of the Fourth Amendment applies. Because, as *Chimel* and *Belton* teach, the Constitution requires a warrant except under those exigencies that allow otherwise, the issue is not whether the defendant has "evaded" a search by departing the vehicle, but rather whether the totality of the facts still presents the kind of situation that justifies dispensing with the warrant requirement.[4] In this case, the facts do not support such a result.

IV.

¶ 35 For the foregoing reasons, we conclude that the warrantless search of Dean's Jeep cannot be justified as a search incident to arrest. Accordingly, we vacate the opinion of the court of appeals and reinstate the order of the superior court suppressing the evidence seized in this

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[4] Whether the defendant "fled" the vehicle is no more relevant to the *Belton* analysis than a defendant's flight from a home would be relevant to the determination of whether a search of that home after the defendant was arrested miles away was incident to that arrest. Indeed, by its very nature, flight from the vehicle tends to minimize the dual concerns that underlie the search incident to arrest exception – police safety and protection of evidence. Flight may, of course, be relevant to establish other exceptions to the Fourth Amendment warrant requirement, such as whether the defendant has abandoned the vehicle, whether an administrative inventory of the vehicle is necessary or whether sufficient probable cause exists to justify a warrantless search under the automobile exception.

search. This case is remanded to the superior court for further proceedings consistent with this opinion.

CONCURRING: CHARLES E. JONES, Chief Justice, RUTH V. McGREGOR, Vice Chief Justice, REBECCA WHITE BERCH, and Michael D. Ryan [sic], Justices.

(13)

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IN THE

Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ of Certiorari to the Arizona Court of Appeals Division Two

SUPPLEMENTAL BRIEF OF RESPONDENT

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SUPPLEMENTAL BRIEF OF RESPONDENT

Respondent files this supplemental brief pursuant to Supreme Court Rule 25.5[1] to address the Arizona Supreme Court's decision in *State* v. *Dean*, No. CR-02-0427-PR, 2003 WL 22120722 (Ariz. Sept. 15, 2003), which was issued after the close of briefing in this case. As demonstrated below, in *Dean*, the Arizona Supreme Court unequivocally repudiated the legal test adopted by the Arizona Court of Appeals that is petitioner's sole basis for seeking this Court's review of the decision below. Thus, the legal test that petitioner challenges as erroneous is no longer good law in Arizona. Accordingly, there is no reason for the Court to decide the question presented in the State's petition, and it would be appropriate for the Court to dismiss the writ of certiorari as improvidently granted. See Robert L. Stern et al., *Supreme Court Practice* 330-31 (8th ed. 2002) (dismissal of writ is appropriate when "[a]n intervening court decision . . . may eliminate the issue") (citing cases); *Piccirillo* v. *New York*, 400 U.S. 548 (1971) (per curiam) (dismissing writ as improvidently granted when intervening decision of New York Court of Appeals resolved the question that prompted the Court to grant the writ); see also *Cook* v. *Hudson*, 429 U.S. 165 (1976) (per curiam) (dismissing writ as improvidently granted when intervening decision of this Court and enactment of state statute resolved question at issue); *Rice* v. *Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 73 (1955) (dismissing writ as improvidently granted where state statute "bar[red]" question presented "from again arising" in the state).

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[1] Supreme Court Rule 25.5 states:

> [a] party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument.

The judgment of the Arizona Court of Appeals in this case was that petitioner failed to meet its burden of proving that the warrantless search of respondent's vehicle was reasonable under the Fourth Amendment.[2] In its opinion, the court reasoned that *New York* v. *Belton*, 453 U.S. 454 (1981), applies "only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation ... while the defendant is still in the automobile.'" Pet. App. A-6 (omission in original). Petitioner sought review in this case solely to challenge the court of appeals' adoption of the so-called "initial contact rule": "The Arizona Court of Appeals erred by holding in *State v. Gant* that *Belton* is inapplicable absent evidence of the suspect's actual or constructive awareness of the police before getting out of the vehicle." Cert. Pet. 7. See also Pet. Br. 6 ("The court of appeals misconstrued *Belton* by adding subjectivity to the straightforward *Belton* rule. Contrary to the *Gant* court's view ... the arrestee's actual or constructive awareness of the police before exiting the vehicle is irrelevant.... The *Gant* rule contravenes *Belton*'s purposes by requiring police to 'signal confrontation' before an individual alights."); Pet. Reply Br. 2 ("The question presented concerns the validity of the initial contact rule. There is only one question presented in Arizona's petition for certiorari: whether *Belton* is limited by the initial contact rule imposed by the Arizona Court of Appeals.") (capitalization omitted).

As petitioner acknowledges (Pet. Supp. Br. 2), in *Dean*, the Arizona Supreme Court unequivocally repudiated the initial contact rule, making specific reference to the decision below:

> The analytic approach taken by the court of appeals in ... *Gant*, under which the applicability of the *Belton*

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[2] Respondent's position is that the *judgment* of the Arizona Court of Appeals is correct and that this Court need not reach the issue of whether the particular *test* employed by that court is correct. *See* Resp. Br. 1-2, 7-9, 11, 20-23.

> rule turns entirely on whether the police initiated contact with the arrestee while he was still in the vehicle, is not supported by the rationale of either *Belton* or *Chimel* ....
>
> ....
>
> ... [A] number of courts have found initiation of contact by the police irrelevant to the determination whether an arrestee was a recent occupant of a vehicle under *Belton*. We agree with the general analytical approach taken in [those] decisions.

Pet. Supp. App. 13-15 (citations omitted). Thus, the Arizona Supreme Court has squarely rejected the rule adopted by the court of appeals that petitioner seeks to have this Court review. Whether or not there remains a split of authority among state and federal courts as to the validity of the initial contact rule, Pet. Supp. Br. 4, it is undisputed that the initial contact rule is no longer the law in Arizona. Accordingly, the decision below is not a proper vehicle for resolving that split.

Petitioner also contends that while the *Dean* decision is "consistent with the State's argument in the instant case," it nonetheless does not resolve this case, and is "only minimally instructive because its facts are so unusual." *Id.* at 2, 3, 4. Indeed, petitioner devotes much of its supplemental brief to arguing that *Dean* does not control this case because it is factually distinguishable. *Id.* at 3-7. Petitioner's strained attempt to limit the scope of *Dean* is beside the point. The fact remains that because *Dean* overruled *Gant*'s adoption of the initial contact test, the sole question that this Court undertook to review is no longer presented by this case.

Petitioner is asking this Court to undertake an entirely academic exercise: whatever this Court's judgment might be on the initial contact rule, it cannot have any effect in Arizona

since that rule is no longer followed in that state.[3] Indeed, there could be no suggestion that the Court would have granted review of the question posed by petitioner if the *Dean* decision had been on the books at the time the petition was filed. Therefore, there is no reason for the Court to decide the question presented in the petition, and it would be appropriate for the Court to dismiss the writ of certiorari as improvidently granted.

CONCLUSION

As the question presented in the petition has been resolved by the Arizona Supreme Court, the Court should dismiss the writ of certiorari as improvidently granted.

Respectfully submitted,

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[3] The academic nature of any review by this Court of the initial contact rule is underscored by the fact that the rule is not defended by any party before the Court.

Supreme Court, U.S.
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JUL 3 - 2003
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No. 02-1019

In the Supreme Court of the United States

STATE OF ARIZONA, PETITIONER

v.

RODNEY JOSEPH GANT

ON WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant when the arrestee exited the vehicle voluntarily rather than on police direction.

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In the Supreme Court of the United States

No. 02-1019

STATE OF ARIZONA, PETITIONER

v.

RODNEY JOSEPH GANT

ON WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant when the arrestee exited the vehicle voluntarily rather than on police direction. The resolution of that question will affect the practices of federal law enforcement officers in the commonly recurring situation in which the recent occupant of a vehicle is arrested. In addition, it will affect the admissibility in federal prosecutions of evidence obtained by federal, state, or local law enforcement agents as the result of the search of an automobile incident to the lawful arrest of an individual who has

recently occupied the vehicle. The United States addressed the same question in *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001), but this Court dismissed the writ of certiorari in that case for want of jurisdiction.

STATEMENT

Following a jury trial in the Superior Court for Pima County, Arizona, respondent was convicted of possession of cocaine for sale and possession of drug paraphernalia. He was sentenced to concurrent terms of imprisonment not exceeding three years. The Arizona Court of Appeals, Division Two, reversed.

1. On August 25, 1999, Tucson police officers responded to a report of possible drug activity at a residence on North Walnut Avenue. Respondent answered the door and said that the resident was out. After learning that respondent had an outstanding warrant for failure to appear and a suspended driver's license, the officers returned to the house later in the day and came upon a man and a woman outside the house. The woman had a crack pipe. The officers then saw a vehicle drive up to the house. As the car pulled into the driveway, an officer shined a flashlight into the car and recognized respondent from earlier in the day. The officer walked to the car as respondent got out of it and called respondent's name. The officer arrested respondent on the outstanding warrant and for operating a vehicle without a valid driver's license, handcuffed him and put him in the back of his patrol car, and then searched the passenger compartment of respondent's vehicle. The search revealed a handgun and a bag of cocaine. Pet. App. A2-A3; J.A. 10-11.

2. Respondent filed a pre-trial motion to suppress the evidence seized during the search of the vehicle he had occupied just before his arrest. The trial court

denied that motion, finding that respondent's arrest was lawful and that the search of his car was a lawful incident of that arrest under *New York* v. *Belton*, 453 U.S. 454 (1981). J.A. 30-32, 36. The court explained that "[o]nce the officers saw [the defendant] in the vehicle, I don't think it's a foot race to see whether the officers can get to the vehicle before the defendant steps out and walks a few steps away from the vehicle." J.A. 32. In the court's view, "the effect of granting the motion would be * * * to say that the defendant controls the scope of the search by how fast he can walk or run [from a vehicle]." *Ibid.*

3. The Arizona Court of Appeals, Division Two, reversed. Pet. App. A1-A12. The court of appeals concluded that *Belton* does not apply when a defendant exits a car "voluntarily—that is, not in response to police direction." *Id.* at A5. Instead, the court reasoned, "[*Belton*] applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Id.* at A6. Applying that understanding, the court held that *Belton* does not justify the vehicle search at issue because, the court stated, the record does not establish "that the police were attempting to initiate contact with [respondent] while he was in the vehicle either by confronting him or by signaling an intent to confront him, notwithstanding the officer's shining the flashlight." *Id.* at A8.[1]

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[1] The court of appeals also held that the search of respondent's vehicle was not justified under *Chimel* v. *California*, 395 U.S. 752 (1969), and was not supported by probable cause. Pet. App. A8-A9.

4. The Arizona Supreme Court denied the State's petition for discretionary review. Pet. App. B1.

SUMMARY OF ARGUMENT

In *New York* v. *Belton*, 453 U.S. 454, 460 (1981), this Court adopted a bright-line rule to guide the officer in the field when the "recent occupant" of an automobile is arrested: the officer may search the passenger compartment of the vehicle that the arrestee occupied as a contemporaneous incident of the arrestee's lawful custodial arrest. The Arizona Court of Appeals' decision in this case limits the application of the *Belton* rule to instances in which the arrestee exited a vehicle at the direction of law enforcement personnel, as opposed to voluntarily, *i.e.*, without police direction. Pet. App. A6. That limitation should be rejected.

The *Belton* rule is grounded on the historic rationales of the search-incident-to-arrest doctrine—the need to protect officer safety and to preserve evidence of a crime. Those rationales are implicated "whenever officers effect a custodial arrest" of the recent occupant of a vehicle. *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983). A custodial arrest is a volatile and dangerous event, with heightened risks that a suspect will grab for a weapon or attempt to conceal or destroy evidence of his guilt. In the *Belton* context, those concerns justify the search of a vehicle recently occupied by an arrestee, whether the arrestee was ordered out of the car by police or voluntarily exited the car oblivious to police. It is the arrest of the vehicle's recent occupant, and not the reason he exited the vehicle, that justifies the *Belton* search. A rule that is dependent on whether

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The question presented in this Court, however, is limited to the court of appeals' application of *Belton*. Pet. i.

police confront arrestees while they are still inside a vehicle is antithetical to *Belton*'s officer–safety rationale because it may increase the volatility of an already extremely dangerous encounter.

The Arizona Court of Appeals' decision not only has no connection to the rationales of *Belton*, but it needlessly blurs the bright line drawn by *Belton*. In *Belton*, this Court recognized that it was essential to provide the officer in the field with a "single familiar standard" to determine when a vehicle search is authorized incident to an arrest. 453 U.S. at 458. The court of appeals' decision undermines that important objective by requiring officers to undertake an ad hoc, case-by-case inquiry into the reason that an arrestee exited his vehicle in order to decide whether a search of the passenger compartment is authorized. Pet. App. A7. That inquiry reintroduces the uncertainty and line-drawing problems that this Court sought to eliminate in *Belton*. Indeed, the court of appeals in this case held that the applicability of *Belton* turned on such subjective inquiries as whether respondent was aware of police activity at the residence when he exited his car or interpreted the light shined into his car as a signal that the police intended to confront him. *Ibid.*

Belton has built-in limitations, but those limitations do not support the Arizona Court of Appeals' rule. *Belton* applies only in the case of the lawful arrest of a vehicle's "recent occupant" and only with respect to vehicle searches conducted as a "contemporaneous incident" to such an arrest. 453 U.S. at 460. In some cases, where the individual has moved a considerable distance from the car before the arrest, there may be disagreement on whether an arrestee is a sufficiently "recent occupant" to trigger *Belton*. But it is clear that *Belton* applies in the far more typical situation in which an

officer sees an individual exit the vehicle and arrests him moments later in the same general area that the arrestee might have occupied if he had been ordered out of the car—*i.e.*, in the context at issue in this case.

Under a proper application of *Belton*, the search of respondent's vehicle was valid. Respondent was a "recent occupant" of the car; he was subjected to a "lawful custodial arrest" next to the car; and the search of respondent's car was conducted as "a contemporaneous incident of that arrest." *Belton*, 453 U.S. at 460. The police arrested respondent moments after an officer saw him exit his car and searched his vehicle as part of one continuous event. Accordingly, the challenged search was a reasonable and, thus, lawful intrusion under the Fourth Amendment. The contrary judgment of the Arizona Court of Appeals should be reversed.

ARGUMENT

A SEARCH OF THE PASSENGER COMPARTMENT OF AN AUTOMOBILE IS JUSTIFIED AS A CONTEMPORANEOUS INCIDENT OF THE LAWFUL CUSTODIAL ARREST OF THE VEHICLE'S RECENT OCCUPANT WITHOUT REGARD TO WHETHER THE ARRESTEE EXITED THE VEHICLE VOLUNTARILY OR ON POLICE DIRECTION

A. Under *New York* v. *Belton*, Police Officers May Search The Passenger Compartment Of A Car Incident To The Lawful Custodial Arrest Of Any "Recent Occupant" Of The Vehicle

1. The Fourth Amendment to the Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and further provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This

Court has long recognized that when there has been a lawful arrest, a search of the person of the arrestee and area within his control "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973); see *Weeks* v. *United States*, 232 U.S. 383, 392 (1914). There are two longstanding rationales for the search-incident-to-arrest doctrine: the need "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and the need to prevent the "concealment or destruction" of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); see *Knowles* v. *Iowa*, 525 U.S. 113, 116-117 (1998) (citing cases).

As this Court has recognized, the custodial arrest is a highly volatile and dangerous event. See *Knowles*, 525 U.S. at 117; *Robinson*, 414 U.S. at 234-235 & n.5. Between 1992 and 2001, for example, 221 of the 643 law enforcement officers who were feloniously killed in the line of duty were slain in arrest situations, making the arrest by far the most dangerous situation that officers routinely confronted during that period. FBI, U.S. Dep't of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 33 (2001) (*Uniform Crime Reports*). In 2001, 24 of the 142 law enforcement officers killed in the line of duty were engaged in arrest situations when they were mortally wounded, and in that same year officers were assaulted while attempting arrests on 9107 occasions. *Id.* at 32, 93; see also FBI, U.S. Dep't of Justice, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 3 (Sept. 1992).[2] In addition, the moment an

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[2] Drug-related arrests pose a particularly high risk to police officers. In 2001, for example, eight of the 24 officers who were

individual is placed under formal arrest, he has an increased motive "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp* v. *Murphy*, 412 U.S. 291, 296 (1973).

Accordingly, this Court has recognized that, "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel*, 395 U.S. at 762-763. Further, the officer's need to protect himself and to preserve evidence justifies a search of the area within the arrestee's "immediate control," which the Court has defined as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence." *Id.* at 763. Because "potential dangers lurk[] in all custodial arrests," *United States* v. *Chadwick*, 433 U.S. 1, 14-15 (1977), the validity of a search incident to arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. Rather, "[i]t is the fact of the lawful arrest which establishes the authority to search." *Ibid.*

2. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court applied those principles to define the permissible scope of a search incident to the arrest of the occupant of an automobile. *Belton* arose when a New York state trooper stopped a car for speeding and thereafter de-

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slain in arrest situations were investigating drug-related matters. *Uniform Crime Reports* 32 (2001); see *id.* at 33 (between 1992 and 2001, 38 of the 221 officers feloniously killed in arrest situations were investigating drug-related matters).

veloped probable cause to arrest the occupants of the vehicle for possession of marijuana. The officer ordered the occupants out of the car and placed them under arrest. See *id.* at 455-456. After "patt[ing] down" the arrestees and separating them, the officer searched the passenger compartment of the car and discovered cocaine. See *id.* at 456. The state courts suppressed the evidence found during the search on the ground that, when the search took place, "there [was] no longer any danger that the arrestee or a confederate might gain access to the article." *Ibid.* This Court reversed.

The Court began its Fourth Amendment analysis with the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Belton*, 453 U.S. at 457. The Court then explained that courts had struggled in applying the search-incident-to-arrest doctrine to the recurring question presented in *Belton*, namely, "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it*." *Id.* at 459 (emphasis added). As the Court recognized, the lower courts were in "disarray" on that issue and had "found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 459 n.1, 460.

The Court admonished that "[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." 453 U.S. at 458. "[T]o establish the workable rule [that] this cate-

gory of cases requires," the Court adopted "the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). Based on that generalization, the Court held that whenever "a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnotes omitted).

In *Belton*, the Court emphasized that this rule, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." 453 U.S. at 461 (quoting *Robinson*, 414 U.S. at 235). Just as is true with respect to the search of the person of the arrestee, if the arrest is lawful, then the "search [of the vehicle] incident to the arrest requires no additional justification." *Ibid.* (same). In subsequent cases, this Court has specifically recognized the "bright-line" nature of *Belton*'s search-incident-to-arrest rule. See *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001) ("In [*Belton*], we established a 'bright-line' rule permitting a law enforcement officer who has made a lawful custodial arrest of the occupant of a car to search the passenger compartment of that car as a contemporaneous incident of the arrest."); see also *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983).[3]

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[3] As Justice Powell explained in his opinion concurring in the judgment of *Robbins* v. *California*, 453 U.S. 420 (1981), which was

3. An individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest. *Belton* applies as long as the arrestee is a "recent occupant" of the vehicle, 453 U.S. at 460, as was true in the case of Roger Belton and his companions, who had exited the vehicle before it was searched. See *id.* at 456, 462-463; 3 Wayne R. LaFave, *Search and Seizure* § 7.1(b) at 437 & n.26 (3d ed. 1996 & Supp. 2003) (LaFave) ("*Belton* applies whenever the person arrested was * * * the driver of or a passenger in the vehicle just before the arrest.") (collecting cases). Justice Brennan underscored that dimension of *Belton* in his dissent. See 453 U.S. at 463 (The Court's "'bright-line' rule [is] applicable to 'recent' occupants of

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decided the same day as *Belton*, the *Belton* rule is also supported by the diminished expectation of privacy that an individual has in the circumstances giving rise to its application:

> *Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court's rule. The occupants of an automobile enjoy only a limited expectation of privacy in the interior of the automobile itself. This limited interest is diminished further when the occupants are placed under custodial arrest.

Id. at 431 (citations omitted). Cf. *United States* v. *Edwards*, 415 U.S. 800, 808-809 (1974) ("While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence."). An individual's expectation of privacy in the vehicle he was occupying immediately before an arrest is further diminished by the fact that the Fourth Amendment permits police to inventory the contents of impounded vehicles under standardized procedures at a time and place removed from an arrest. See *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

automobiles."). And, as a practical matter, that is the only understanding of *Belton* that makes sense.

The vast majority of arrests that take place in the *Belton* context occur "after the arrestees are no longer in [the car]." 453 U.S. at 459. Police officers face an "inordinate risk" when "approach[ing] a person seated in an automobile" and, as a result, often order occupants out of the car when conducting an investigation that may lead to an arrest. *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (officer may, without particularized justification, order a driver out of the car after stopping vehicle); see *Maryland* v. *Wilson*, 519 U.S. 408, 414 (1997); see also *United States* v. *Thornton*, 325 F.3d 189, 195 (4th Cir. 2003) ("[W]hen encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight."). And it is invariably safer and more efficient for an officer to search the vehicle after an arrestee has exited it. See LaFave § 7.1(a) at 435 n.15 (The "fairly standard practice" is to remove an arrestee before searching the vehicle he occupied).

B. The *Belton* Rule Applies Without Regard To Whether The Arrestee Exited The Vehicle Voluntarily Or On Police Direction

The Arizona Court of Appeals recognized that *Belton* applies "regardless of whether the defendant has been removed from or has exited the automobile," but held that its applicability turns on the reason that the arrestee exited the vehicle. Pet. App. A6. According to the court, *Belton* does not apply if the arrestee exited

the vehicle "voluntarily," but does apply if the arrestee did so "in response to police direction." *Id.* at A5. For several reasons, that limitation is fundamentally flawed.

1. *Belton*, along with the search-incident-to-arrest cases on which the Court relied in *Belton*, makes clear that the custodial arrest gives rise to the authority to the search. See *Belton*, 453 U.S. at 461 ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."); see also, *e.g.*, *United States* v. *Edwards*, 415 U.S. 800, 802-803 (1974); *Chimel*, 395 U.S. at 762-763; *Preston* v. *United States*, 376 U.S. 364, 367 (1964). As explained above, that conclusion follows from the potential dangers inherent in every custodial arrest. Those dangers arise as soon as an individual is placed under custodial arrest, regardless of whether the individual initially got out of his vehicle voluntarily or at the direction of police.

This Court's decision in *Michigan* v. *Long*, *supra*, indicates that *Belton* is not limited to instances in which the arrestee is ordered out of the car by police. In *Long*, police officers saw a car swerve into a ditch. When they stopped to investigate, the driver of the car, "the only occupant of the automobile, met the deputies at the rear of the car." 463 U.S. at 1035. The officers issued the driver a ticket, but did not arrest him. The question in *Long* was whether the officers lawfully conducted a protective *Terry*-type search of the passenger compartment of the car during the encounter. Before turning to that question, however, the Court observed that "[i]t is clear * * * that if the officers had arrested [the driver]," instead of simply issuing him a ticket, "they could have searched the passenger compartment" under *Belton*. *Id.* at 1035 n.1. As the Court explained,

"*Belton* clearly authorizes [an automobile] search *whenever* officers effect a custodial arrest." *Id.* at 1049 n.14 (emphasis added). That was true in *Long* even though the police did not initiate contact with the individual until after he had voluntarily exited his car.

Knowles v. *Iowa*, *supra*, reinforces the conclusion that the arrest is the pivotal event under *Belton*. In that case, the Court held that a police officer may not conduct a warrantless search of a vehicle incident to a traffic citation. The Court explained that "[t]he threat to officer safety from issuing a traffic citation * * * is a good deal less than in the case of a custodial arrest," and that "the concern for destruction or loss of evidence is not present at all" in the case of a citation. 525 U.S. at 117, 119. At the same time, however, the Court reaffirmed—specifically pointing to *Belton*—that when, as here, there *is* a "custodial arrest," police officers may "conduct a full search of the passenger compartment" of a car in order "to search for weapons and protect themselves from danger." *Id.* at 117, 118 (citing *Belton*, 453 U.S. at 460). Unlike the defendant in *Knowles*, respondent was lawfully arrested.

2. The Arizona Court of Appeals' limitation on the application of *Belton* is inconsistent with the historic rationales underlying the search-incident-to-arrest doctrine. The likelihood that an arrestee will lunge for a weapon contained in a vehicle that he has recently occupied does not fluctuate based on the reason that he exited the vehicle. "The danger to the police officer *flows from the fact of the arrest*, and its attendant proximity, stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5 (emphasis added); see *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Thus, regardless of *why* an individual gets out of his

car, "the 'bright line' that [this Court] drew in *Belton* clearly authorizes [a search of the car] *whenever* officers effect a custodial arrest." *Long*, 463 U.S. at 1049 n.14 (emphasis added); see *Thornton*, 325 F.3d at 195 (The rationales underlying *Belton* apply "regardless of whether the arrestee exits the automobile voluntarily or because of confrontation with an officer.").

So too, as of the moment of arrest the suspect has an increased motive to conceal or destroy incriminating evidence. See *Belton*, 453 U.S. at 457; *Chimel*, 395 U.S. at 763; see also LaFave § 5.2(c) at 78. The likelihood that an arrestee will attempt to destroy evidence in a car—and the officer's interest in preventing such efforts—does not vary based on whether an arrestee got out of his car of his own volition or upon an officer's bidding. And, as this Court has stated, the need to preserve the integrity of such evidence following the arrest "justifies an 'automatic' search" under *Belton*. *Long*, 463 U.S. at 1049 n.14; see also *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999) ("[A] knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact.").

The facts of this case aptly illustrate the soundness of the rationale on which *Belton* rests. Respondent drove his vehicle to a residence at which police had already found individuals outside with drug paraphernalia, Pet. App. A2, and, as noted, encounters involving illegal drugs pose heightened dangers to officers, note 2, *supra*. Moreover, respondent's vehicle contained both a weapon (a handgun) and contraband (cocaine). Pet. App. A3. Quite apart from the reason that respondent exited his ~~car,~~ when he was placed under custodial arrest moments later respondent had an increased incentive to lunge for the weapon in his car to facilitate

an attempted escape or the drugs in the car to destroy the evidence of a crime.

3. The Arizona Court of Appeals' decision arbitrarily blurs the bright line adopted by *Belton*. It thus would create the same sort of uncertainty from the standpoint of the officer in the field and disarray in the case law that this Court specifically sought to preclude in *Belton*. See also *Wyoming* v. *Houghton*, 526 U.S. 295, 305-306 (1999) ("When balancing the competing interests, our determinations of 'reasonableness' under the Fourth Amendment must take account of * * * practical realities" such as the "bog of litigation * * * in the form of both civil lawsuits and motions to suppress in criminal trials" that would stem from a rule that turns on post hoc inquiries into subjective beliefs of individuals or subtle factual distinctions.).

In *Belton*, the Court emphasized the need to provide police officers with a clear, easily administered rule for the dangerous and recurring situation involving the arrest of the recent occupant of a vehicle. 453 U.S. at 458; see *Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment) (*Belton* recognizes that "practical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence."). "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'" *Belton*, 453 U.S. at 458.

The Arizona Court of Appeals' decision reintroduces the uncertainty and subtlety that *Belton* sought to

foreclose. Under the court's decision, the determination whether *Belton* permits the search of an arrestee's car requires the officer to make an individualized determination of the reason that the arrestee got out of his car. If the arrestee exited his car because the officer "actually confront[ed]" or "signal[ed] confrontation" with him, then *Belton* applies. Pet. App. A6. In contrast, if the officer believes that the arrestee "voluntarily" exited his car without police direction, *id.* at A5, then *Belton* does not apply. In addition, under the court of appeals' decision, if the officer determines that the suspect exited the car simply to "avoid *Belton*'s application," then *Belton* applies regardless of whether the officer initiated contact with the suspect before he exited his vehicle car. *Id.* at A6.

That regime would require law enforcement personnel to make a variety of ad hoc determinations—subject to second-guessing by a court—in the limited time that they have to assess the situation after arresting the recent occupant of a vehicle. *Belton*, 453 U.S. at 458. For example, in deciding whether a *Belton* search is authorized, an officer would have to ascertain (1) whether the arrestee was aware of the police when he got out of the car, a determination that may depend on whether the police are in uniform or a marked squad car, police lights or sirens have been activated, or the arrestee was impaired in a manner that could have affected his awareness of the police, see Pet. App. A7; (2) whether, if the arrestee *appeared* to get out of the car voluntarily, the arrestee nevertheless did so to avoid the application of *Belton*, see *id.* at A6; and (3) whether an officer sufficiently "signal[ed] confrontation" (*ibid.*) with an arrestee while he was in the car, such that the arrestee got out of the car due to the officer's contact as opposed to another reason.

The subjective nature and potential complexity of that determination is illustrated by the facts of this case. The police in this case "shin[ed] a flashlight into [respondent]'s vehicle" as they approached the car, but the court nonetheless concluded that the record failed to show "that the police attempted to initiate contact with [respondent] while he was still in his vehicle or that he had attempted to evade contact with the police by exiting his vehicle" and, indeed, the court concluded that the record in this case contains numerous shortcomings that barred application of *Belton*. Pet. App. A7; see *ibid.* ("[W]e do not believe that, by shining a flashlight into [respondent]'s vehicle, the officer necessarily initiated contact with him."). Short of an admission from the defendant that he was aware of the police when he got out of his car, it is difficult to see how the State could meet the sort of evidentiary burden imposed by the decision in this case.

Respondent speculates (Br. in Opp. 16-17) that applying *Belton* when the police do not initiate contact with the arrestee while he is *in* the vehicle will create line-drawing problems. The problems he foresees would arise when the police do not confront the individual immediately after he has exited the car. There is no such problem in this case. The police officer in this case saw respondent exit his car and contacted him seconds later in the vicinity of the car that he had just occupied. Pet. App. A3. That is the situation in which the question presented is most likely to arise and, in such a case, it is clear that the arrestee has just occupied the vehicle because a police officer invariably sees him exit the car and confronts him moments later.[4]

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[4] See, *e.g.*, *Thomas*, 532 U.S. at 777 (police officer met suspect along side vehicle moments after the officer saw him exit car);

In some cases, lower courts have concluded that *Belton* is inapplicable on the ground that an arrestee had moved beyond the vicinity of the vehicle he had occupied before he was arrested.[5] Any question about the application of *Belton* in that setting provides no reason to deny officers the certainty and protection afforded by *Belton* in the more typical case, such as this one. Here, the arrestee was confronted by police moments after he exited the vehicle in the same place where he might have been if he had been ordered out of the vehicle. See *Wyoming* v. *Houghton*, 526 U.S. at 305 ("[T]he balancing of [Fourth Amendment] interests must be conducted with an eye to the generality of cases."); see also *United States* v. *Alvarez-Sanchez*, 511

Long, 463 U.S. at 1035-1036 (same); *Thornton*, 325 F.3d at 190-191 (suspect stopped car and got out of it before police could pull car over, but police approached suspect along side car moments after he exited it); *United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996) (as officer arrived on scene, "he immediately saw [the defendant], who was just stepping out of his vehicle," and confronted him); *United States* v. *Willis*, 37 F.3d 313, 317 (7th Cir. 1994) (officer saw arrestee sitting in vehicle and then squatting at rear of car and arrested him alongside vehicle); *State* v. *Wanzek*, 598 N.W.2d 811, 815-816 (N.D. 1999) (suspect exited car immediately before arrest and met officer at rear of vehicle).

[5] See, *e.g.*, *United States* v. *Edwards*, 242 F.3d 928, 938 (10th Cir. 2001) (*Belton* does not apply where suspect "was not arrested in or near the car, but 100-150 feet away from the car"); *United States* v. *Green*, 324 F.3d 375, 379 (5th Cir. 2003) (*Belton* does not apply where officers approached the arrestee "after he exited his vehicle and was at his front door steps"); *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (*Belton* does not apply where arrestee was "approximately thirty feet from his vehicle when arrested," such that "the passenger compartment of the vehicle was not within [his] 'immediate control' at the time of the arrest"); *State* v. *Porter*, 6 P.3d 1245, 1249 (Wash. Ct. App. 2000) (*Belton* does not apply where arrestee was 300 feet from vehicle).

U.S. 350, 359-360 (1994); *Albright* v. *Oliver*, 510 U.S. 266, 291 (1994) (Souter, J., concurring in judgment). Moreover, the court of appeals' conclusion that *Belton* does not apply in this case was not based on the notion that respondent had moved too far away from the vehicle he had just occupied, but rather solely on the fact that respondent exited the vehicle voluntarily instead of on police direction. Pet. App. A8.

4. The Arizona Court of Appeals' decision could increase the risks inherent in an already highly volatile encounter, in direct contravention of *Belton*'s officer-safety rationale. Although the court of appeals stated that occupants of a vehicle "cannot avoid *Belton*'s application * * * simply by exiting the vehicle when officers are seen or approach," Pet. App. A6, its decision inevitably creates an incentive for suspects to quickly exit their vehicles in an attempt to render the vehicles "search proof" under *Belton*. See *Thornton*, 325 F.3d at 196; *Glasco*, 513 S.E.2d at 142. When that happens, officers will not know if exiting suspects are attempting to flee, initiate an altercation, or avoid application of *Belton*. At the same time, the Arizona rule may lead police to rush a confrontation with vehicle occupants, in order to ensure that *Belton* will apply in the event of an arrest. See *State* v. *Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999). Either impulse would paradoxically create a more dangerous world for officers than the one that existed before *Belton*.

The court of appeals' decision also fails to take into account that in many situations, including undercover operations, it may be undesirable or infeasible for police to announce their presence and initiate contact with an individual *before* the individual gets out of a vehicle. Cf. *Shipley* v. *California*, 395 U.S. 818, 819 (1969) (per curiam). That may be particularly true where police

are on the lookout for a particular suspect, whose identity may not be known or discernable until the suspect exits a vehicle, or where police do not develop suspicion to investigate until an individual gets out of a vehicle, such as where officers observe an individual get out of a car brandishing a firearm or carrying contraband. See *Thornton*, 325 F.3d at 195 ("[W]e can certainly imagine the hesitancy of an officer to activate his lights and sirens if the officer encounters the arrestee while conducting undercover surveillance in an area."). At the same time, "[m]andating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others." *Ibid.* Nothing in *Belton* requires this Court to subject law enforcement agents to that dilemma.

C. The Search Of Respondent's Car Was Valid Under *Belton*, Because It Was A Contemporaneous Incident Of Respondent's Lawful Custodial Arrest

1. Under *Belton*, the search of respondent's vehicle was a valid search incident to respondent's arrest. Respondent was a "recent occupant" of the car. *Belton*, 453 U.S. at 460. An officer saw respondent drive up to the residence, park his car, and get out of the vehicle. Pet. App. A2. Although the record does not establish the precise distance between respondent and his vehicle when he was confronted by police, it is clear that respondent was confronted by an officer and subjected to a "lawful custodial arrest" moments after he exited his car while standing in the same general vicinity in relation to the car that he might have occupied if he had been ordered out of the car. In addition, the officer

searched the passenger compartment of respondent's car as "a contemporaneous incident" to respondent's arrest. 453 U.S at 460. The officer arrested respondent, put him in his patrol car, and searched the vehicle as part of one continuous event. See Pet. App. A3.

2. Neither the Arizona Court of Appeals nor respondent has objected to the *Belton* search at issue in this case on the ground that respondent was secured in the patrol car at the time that the search was conducted. Instead, both the court of appeals and respondent have objected to the application of *Belton* based solely on the ground that respondent voluntarily exited the vehicle before he was confronted by police. See Pet. App. A5, A8; Br. in Opp. 7 (*Belton* is "inapplicable in situations involving defendants who are arrested after *voluntarily* departing their vehicles prior to any police contact") (emphasis in original); *id.* at 9, 11-12.

This Court's customary practice is to "deal with the case as it came here and affirm or reverse based on the ground relied on below." *Peralta* v. *Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988); see *Owasso Indep. Sch. Dist.* v. *Falvo*, 534 U.S. 426, 431 (2002) ("[I]t is our practice 'to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari.'"). The Court normally does not consider arguments in defense of a judgment that were not presented in a brief in opposition, much less arguments that were not even raised in the courts below. See *Knowles*, 525 U.S. at 116 n.2; *South Cent. Bell Tel. Co.* v. *Alabama*, 526 U.S. 160, 171 (1999); Sup. Ct. R. 15.2. There is no reason for the Court to depart from that settled practice here.

In any event, the fact that respondent was secured in the patrol car at the time of the search does not render *Belton* inapplicable. *Belton* applies only when an in-

dividual has been placed under "lawful custodial arrest." 453 U.S. at 460. That is, by definition, in cases covered by *Belton*, the liberty of the recent occupant has already been substantially restrained by the time of the search. It is commonplace for police officers to handcuff an arrestee and put him in a patrol car before conducting a *Belton* search. Thus, lower courts across the country have routinely and virtually unanimously applied *Belton* to situations in which the recent occupant of a car was arrested, handcuffed, and placed in a squad car at the scene of the arrest before his vehicle was searched.[6] Indeed, the practice of restraining an

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[6] See, *e.g.*, *Thornton*, 325 F.3d at 196 n.2; *United States* v. *Wesley*, 293 F.3d 541, 545-549 & n.8 (D.C. Cir. 2002) (citing cases); *United States* v. *Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *United States* v. *McLaughlin*, 170 F.3d 889, 890, 891-892 (9th Cir. 1999); *United States* v. *Sholola*, 124 F.3d 803, 817-818 & n.15 (7th Cir. 1997) (citing cases); *Conrod* v. *Davis*, 120 F.3d 92, 94 (8th Cir. 1997), cert. denied, 523 U.S. 1081 (1998); *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.), cert. denied, 519 U.S. 856 (1996); *United States* v. *Moorehead*, 57 F.3d 875, 877 (9th Cir. 1995); *United States* v. *Doward*, 41 F.3d 789, 791 (1st Cir. 1994) (citing cases), cert. denied, 514 U.S. 1074 (1995); *United States* v. *Riedesel*, 987 F.2d 1383, 1386, 1388 (8th Cir. 1993); *United States* v. *Valiant*, 873 F.2d 205, 206 (8th Cir.), cert. denied, 493 U.S. 837 (1989); *United States* v. *White*, 871 F.2d 41, 44 (6th Cir. 1989); *United States* v. *Karlin*, 852 F.2d 968, 970-971 (7th Cir. 1988), cert. denied, 489 U.S. 1021 (1989); *People* v. *Daverin*, 967 P.2d 629, 631, 632 (Colo. 1998); *State* v. *Harvill*, 963 P.2d 1157, 1158 (Idaho 1998); *People* v. *Bailey*, 639 N.E.2d 1278, 1281-1282 (Ill. 1994), cert. denied, 513 U.S. 1157 (1995); *State* v. *Hensel*, 417 N.W.2d 849, 852-853 (N.D. 1988); *State* v. *Stroud*, 720 P.2d 436, 438 (Wash. 1986); *State* v. *Fry*, 388 N.W.2d 565, 567 (Wis.), cert. denied, 479 U.S. 989 (1986); see also 2 Wayne R. LaFave et al., *Criminal Procedure* § 3.7(a) at 203 & n.14 (2d ed. 2003) ("[A] search of a vehicle under *Belton* is permissible even after the defendant has been removed from the car, handcuffed and placed in a squad car.") (citing cases).

arrestee on the scene before searching a vehicle that he just occupied is so prevalent that, as a practical matter, holding that *Belton* does not apply in that setting would "largely render *Belton* a dead letter." *United States* v. *Wesley*, 293 F.3d 541, 548 (D.C. Cir. 2002).

That usual police practice fully comports with *Belton*. In *Belton*, this Court rejected the proposition—advanced by the dissenters in that case—that, "[w]hen the arrest has been consummated and the arrestee safely taken into custody, the justifications [for a warrantless search] cease to apply," because "at that point there is no possibility that the arrestee could reach weapons or contraband." 453 U.S. at 465-466 (Brennan, J., joined by Marshall, J., dissenting). Instead, the Court adopted the "generalization" that weapons or contraband within the passenger compartment of a car are "generally, even if not inevitably, within the area into which an arrestee [who is the vehicle's recent occupant] might reach." *Id.* at 460. Thus, as the *Belton* dissenters specifically recognized, the rationale of *Belton* applies even after a recent occupant has been handcuffed and put in a squad car. See *id.* at 468 ("Under the approach taken today, the result would presumably be the same even if Officer Nicot had handcuffed Belton and his companions in the patrol car before placing them under arrest."); see also *Wesley*, 293 F.3d at 548 ("*Belton* proclaimed its rule without caveat" and "[t]he dissenters in *Belton* understood the case to establish a flat rule, applicable regardless of the status of the defendants at the time of the search.").[7]

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[7] Indeed, two of the lower court cases that the Court pointed to in *Belton* to illustrate the need for a "straightforward rule" governing "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants"

Even after individuals are taken into custody, they continue to pose a potentially grave threat to law enforcement personnel. See, *e.g.*, *Plakas* v. *Drinski*, 19 F.3d 1143, 1145 (7th Cir.) (suspect handcuffed in backseat of squad car escaped from squad car and later confronted police), cert. denied, 513 U.S. 820 (1994); *United States* v. *Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir.) (citing incidents in which police officers were slain by handcuffed arrestees), cert. denied, 510 U.S. 955 (1993); *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at * 1 (N.D. Tex. May 19, 2003) (arrestee who was handcuffed and secured with a seatbelt in a locked patrol car "suddenly and without warning * * * slipped out of his handcuffs, released the seat belt latch, opened the locked car door, and tried to escape from custody"); see also *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994) (discussing "the unpredictable developments ultimately confronting" police in *Belton* context), cert. denied, 514 U.S. 1074 (1995); see also *id.* at 791-793 & n.1.[8]

(*Belton*, 453 U.S. at 459 & n.1)—*Hinkel* v. *Anchorage*, 618 P.2d 1069, 1069-1070 (Alaska 1980), cert. denied, 450 U.S. 1032 (1981), and *Ulesky* v. *State*, 379 So.2d 121, 123 (Fla. Dist. Ct. App. 1979)—involved situations in which the arrestee was in the back of the patrol car at the time that the vehicle was searched. Applying *Chimel* v. *California*, *supra*, the court of appeals in *Ulesky* reasoned that "once appellant was placed in the patrol car and thereby separated from her purse [in the vehicle], neither of the justifications for the search incident to arrest exception were present." 379 So.2d at 126. As the dissenters in *Belton* recognized (453 U.S. at 468), that reasoning, while arguably consistent with *Chimel*'s case-specific analysis, is out of step with the generalization made by the Court in *Belton* in order to provide officers in the field with a "single familiar standard" in this critical context. *Id.* at 458.

[8] In 2001, two officers were killed and 7343 were assaulted while in the process of handling, transporting, or maintaining the

The bright-line *Belton* rule permits officers to protect themselves against the small but nevertheless potentially deadly risk that an arrestee who has been handcuffed and remains at the scene of the arrest will escape from custody. That protection ensures that, if an arrestee does break free, he will not succeed in retrieving a weapon or contraband from a nearby vehicle. Thus, *Belton* does not prevent officers from engaging in the prudent and widespread practice of restraining an arrestee and putting him in a squad car before searching the vehicle that the arrestee has just occupied. See *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.) ("The fact that [the arrestee] had been handcuffed and placed in the police vehicle just prior to the commencement of the search that yielded the firearm does not affect the lawfulness of the search."; "it does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures."), cert. denied, 519 U.S. 856 (1996).

3. At the same time, there are limitations on how *Belton* searches may be conducted. For example, *Belton* requires that the search of the vehicle be undertaken as "a contemporaneous incident of th[e] arrest." 453 U.S. at 460. Compare, *e.g.*, *Dyke* v. *Taylor*

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custody of prisoners. *Uniform Crime Reports* 32, 93 (2001). In addition, on September 28, 2001, a police officer was killed by a suspect who managed to free himself from his handcuffs, retrieve a handgun, and shoot the officer. *Id.* at 49; see also *Uniform Crime Reports* 49 (1998) (On May 19, 1998, two police officers were killed when a handcuffed suspect in the back seat of their patrol car managed to free himself, retrieve one of the officer's guns, and mortally wound both officers.); *id.* at 50 (officer killed on January 12, 1998, by individual who had been ordered out of his car, when the individual managed to free himself, retrieve a rifle from his car, and mortally wound the officer).

Implement Mfg. Co., 391 U.S. 216, 220 (1968) (search of arrestee's car was "too remote in time or place to [be] incidental to the arrest," where search did not take place until the arrestee was in custody inside the courthouse and his car had been moved by police from the site of the arrest to the street outside the courthouse); *Preston*, 376 U.S. at 368 (search of arrestee's car was not incident to arrest when search was conducted after the car had been towed from the scene of the arrest to a garage); see also *Chadwick*, 433 U.S. at 15 (search of footlocker was too remote when it was conducted "more than an hour" after arrest); see also *Belton*, 453 U.S. at 461-462 (distinguishing *Chadwick*); *United States* v. *Lugo*, 978 F.2d 631, 634-635 (10th Cir. 1992) (*Belton* does not apply after arrestee has been restrained and removed from scene of the arrest).

As the District of Columbia Circuit has explained, a search meets the contemporaneous-incident standard whenever "it is an integral part of a lawful custodial arrest process." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996) (Ginsburg, J.). Thus, in deciding whether a search incident to arrest is proper, "[t]he relevant distinction turns not upon the moment of the arrest versus the moment of the search but upon whether the arrest and search are so separated in time or by intervening events that the latter cannot fairly be said to have been incident to the former." *Ibid.* Under that approach, the search of respondent's vehicle was conducted as a contemporaneous incident of respondent's arrest. The search and arrest were part of "one continuous event," *id.* at 669, which began when respondent was arrested moments after he exited his car and ended shortly thereafter when the officer searched respondent's vehicle. See p. 2, *supra*.

In addition, *Belton* applies only to searches incident to the arrest of the "recent occupant" of the vehicle. 453 U.S. at 460. As discussed, although that term—like the contemporaneous-incident standard—may require careful line-drawing in outlying cases, it clearly encompasses typical scenarios, such as that here, when the police see an individual exit the vehicle and confront him moments later. See pp. 18-20, *supra*. In determining whether *Belton* authorizes a vehicle search in outlying cases, courts should assess the reasonableness of applying the *Belton* rule in light of the basic concerns underlying the search-incident-to-arrest doctrine and the facts and circumstances of the particular arrest and search at issue. But, as discussed above, any difficulty that courts may experience in drawing lines in such atypical cases provides no reason for adopting the limitation imposed by the Arizona Court of Appeals in this case.

In *Thorton*, the Fourth Circuit concluded that a *Belton* search was lawful where the police officers confronted the arrestee moments after he had voluntarily exited his car in "close proximity" to the car. 325 F.3d at 196. As the court of appeals explained, "[t]he conceded close proximity, both temporally and spatially, of [the arrestee] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless." *Ibid.* The circumstances underlying the *Belton* search challenged in this case provide the same assurance: the police saw respondent exit his car, met and arrested him moments later, and immediately searched the vehicle while respondent was still at the scene of the arrest. The Arizona Court of Appeals erred in concluding that such a vehicle search falls outside *Belton*'s bright-line rule.

CONCLUSION

The judgment of the Arizona Court of Appeals should be reversed.

Respectfully submitted.

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No. 02-1019

In the Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* FOR THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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33 pp

QUESTIONS PRESENTED

The petition for *certiorari* presented the following question:

1. When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York* v. *Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

Amicus also will address the following question, which may be of assistance to the Court in resolving the question presented by petitioner:

2. May police search the passenger compartment of a vehicle incident to the arrest of a recent occupant of that vehicle when the arrestee has been handcuffed and placed in the back seat of a nearby police car at the time the search is conducted?

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The National Association of Police Organizations ("NAPO") respectfully moves, pursuant to Supreme Court Rule 37.3(b), for leave to file the attached brief *amicus curiae*. Counsel for petitioner has consented to the filing of this brief, and his original signed consent has been filed concurrently with the filing of this motion. Counsel for respondent has declined to consent.

This case concerns the application of the Fourth Amendment, U.S. Const. amend. IV, and specifically the Court's decision in *New York* v. *Belton*, 453 U.S. 454 (1981), to the search of respondent's car incident to his arrest. This case thus presents a factual scenario that occurs hundreds, and even thousands of times a day in this country: the arrest of a vehicle's recent occupant. As the Court has recognized in *Belton* and in other cases, this scenario presents significant challenges to police officers as they attempt to maintain their own safety and preserve evidence while respecting the dictates of the Fourth Amendment.

NAPO is an umbrella organization representing police associations and unions nationwide. Through its member groups it represents more than 230,000 active sworn law enforcement officers at the state, county, and local levels, as well as retired officers and concerned citizens. Police officers such as those who are members of NAPO groups have a strong and genuine interest in the development of "workable rule[s]," *Belton*, 453 U.S. at 460, under which they can conduct themselves within the Fourth Amendment's strictures, including rules that govern the search of a vehicle incident to arrest.

NAPO hopes to offer the Court the perspective of the working police officer on the lower court's ruling, its potential impact on officer safety and preservation of

evidence, and the necessity of crafting sensible and easily applied Fourth Amendment rules that officers can follow in the field. NAPO respectfully believes that an opportunity to consider its views on the issues raised herein would be of help to the Court in resolving this case.

Accordingly, NAPO requests that the Court grant its motion for leave to file the attached brief *amicus curiae* in support of petitioner.

Respectfully submitted,

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INTEREST OF THE *AMICUS CURIAE* [1]

The National Association of Police Organizations, Inc. ("NAPO") is a coalition of police associations and unions from across the United States. NAPO represents some 1,000 organizations, with over 230,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, highway patrol officers, and traffic enforcement personnel), 11,000 retired officers, and more than 100,000 interested citizens. NAPO seeks, in part, to advance the interests of law enforcement officers through legal advocacy. To that end, NAPO has filed *amicus* briefs in cases in this Court that have raised issues of concern to law enforcement officers.

This case presents an issue of considerable importance to NAPO. Upon arresting the occupant of a vehicle, law enforcement officers, acting under the authority of *New York* v. *Belton*, 453 U.S. 454 (1981), regularly search the vehicle in order to ensure their safety and prevent the destruction of evidence. These interests would be compromised if, as the court below held, officers were barred from conducting such searches incident to arrest in situations where they were not sure whether the suspect was aware of their presence before getting out of his vehicle. NAPO therefore has a strong interest in urging this Court to reverse the decision of the Arizona Court of Appeals.

STATEMENT OF THE CASE

Police went to the home of respondent Rodney Gant to investigate a report of narcotics activity. Respondent answered the door, but falsely told the officers that he was not Rodney Gant and that Gant was not at home. Pet. App. A-2; Jt. App. 5, 10, 19, 31. After leaving respondent's home, police learned that respondent was

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[1] This brief was not authored, in whole or in part, by counsel for any party, and no person or entity other than *amicus curiae* and its counsel made any monetary contribution to its preparation.

wanted for driving on a suspended license and that there was an outstanding warrant for his arrest for failure to appear. Pet. App. A-2

Officers then returned to respondent's home, where they found two people, one of whom possessed a crack pipe, on the premises. Pet. App. A-2. While the officers were still present, respondent drove his car into the driveway. Respondent's car passed one of the officers, who shined his flashlight into the driver's window and recognized respondent. *Ibid.* As the officer walked toward respondent's car, respondent got out of the car and walked toward the officer. *Id.* at A-3. The officer called respondent by name, and respondent admitted that he was Rodney Gant. The officer then arrested respondent for driving with a suspended license and on the outstanding warrant. *Ibid.* After placing respondent in the back seat of a patrol car in handcuffs, the officers searched respondent's vehicle and found a handgun and a jacket that contained cocaine and drug paraphernalia. Pet. App. A-3; Jt. App. 5-7.[2]

Respondent filed a motion to suppress the evidence found in his car, claiming that the warrantless search of his car violated the Fourth Amendment. Pet. App. A-3. The trial court denied respondent's motion, ruling that the car search was lawful as a search incident to respondent's arrest. *Ibid.*

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[2] NAPO acknowledges that the manner in which the facts of this case were determined, *i.e.*, an oral stipulation recited by the trial judge and agreed to by the parties, was less than ideal. Nevertheless, NAPO agrees with petitioner that the stipulated record contains all the facts necessary to decide the question presented by this case. No additional facts that might bear on whether the arresting officer actually knew whether respondent was aware of the police before he got out of his car are necessary to the resolution of this case because, as NAPO argues herein, such a determination by the officer is both impractical to require and irrelevant to the validity of the search of the car after respondent's arrest.

The Arizona Court of Appeals reversed, holding that the search of respondent's car violated the Fourth Amendment. *State* v. *Gant*, 43 P.3d 188 (Ariz. App. 2002), reprinted at Pet. App. A. The court of appeals rejected petitioner's argument that the search of respondent's car was authorized under *New York* v. *Belton*, 453 U.S. 454 (1981), ruling that "*Belton* is limited to the particular factual situation in which it arose," and "applies only when 'the officer initiates contact with the defendant * * * while the defendant is still in the automobile.'" Pet. App. A-6 (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). The court distinguished *Belton* on the ground that the record in this case does not establish that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet. App. A-5. The court found it "significant" that "[respondent] voluntarily—that is, not in response to police direction—stopped his vehicle, exited it, and began to walk away from it." *Ibid.*

In deciding that the record does not sufficiently establish that the officer initiated contact with respondent by shining the flashlight into his car, the lower court conducted a lengthy analysis of the circumstances leading up to the arrest. The court found that the record failed to establish a number of facts it regarded as critical, including how far the officer was from the car when he shined his flashlight at it, whether respondent looked in the direction of the light, to what extent obvious signs of police activity were visible outside the home (such as flashing lights or uniformed officers), and what the lighting conditions were like. In addition, the court found nothing in the record to indicate that the officer had intended to signal his presence and desire to speak with respondent by shining the light into

respondent's car (as opposed merely to trying to see who was inside). Pet. App. A-7, A-8.

In a concurring opinion, one member of the three-judge panel expressed "concerns that our ruling * * * may frustrate [the] purposes [behind *Belton*] and incorporate unintended nuances into this already complicated Fourth Amendment arena." Pet. App. A-10 to A-11.

SUMMARY OF ARGUMENT

In *New York* v. *Belton*, 453 U.S. 454 (1981), the Court adopted a bright-line rule that, when a police officer makes a lawful arrest of the occupant of a vehicle, the officer may search the passenger compartment of that vehicle incident to the arrest in order to protect himself and prevent the destruction of evidence. The *Belton* Court acknowledged the need to craft "workable rule[s]," 453 U.S. at 460, and recognized that "'a single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect'" on the balance of interests implicated by the Fourth Amendment, 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). As a consequence of these concerns, the *Belton* Court held that the passenger compartment of a vehicle, including containers within it, categorically represented an area within the reach of an arrestee, and therefore could be searched incident to the arrest of the vehicle's occupant. 453 U.S. at 460.

The Arizona Court of Appeals based its decision on a peculiar misunderstanding of *Belton*. The court of appeals held that an arresting officer's right to conduct a *Belton* search depends in part on whether the arrestee was somehow aware of the presence of police officers before he got out of his car and was arrested by them, or, as the court put it, whether he "voluntarily" got out of the car or got out because he knew the police were

outside and wanted him out. The court of appeals concluded that *Belton* does not authorize a search of the passenger compartment incident to arrest where the arrestee gets out of his car before he learns the police are present. The lower court's holding should be reversed because it interprets *Belton* in a way that both undermines its bright-line rule and is irrelevant to its underlying reasoning.

The lower court's holding undermines *Belton*'s bright-line rule by requiring police officers who did not cause an arrestee to leave his vehicle to conduct a difficult and individualized assessment of the events leading up to the arrest to determine whether the arrestee knew of their presence before he got out of the vehicle. Because the typical arrest scenario provides police with little time to make such a complex assessment, and because an officer who has not himself stopped the arrestee's car would usually have no way of quickly judging, with any degree of certainty, whether the arrestee had known of his presence before his arrest, the lower court's rule undermines the need to provide officers in the field with a rule that is simple and easy to apply.

Moreover, the fact that an arrestee exits his vehicle before becoming aware of a police presence is irrelevant to the rationale underlying the *Belton* rule—protection of officers and evidence from the dangers that arise when a person is arrested. Initially, the concerns for officer safety and evidence preservation that underlie the rule, and the resulting need to be able to neutralize those dangers in the vehicle, come from the fact of the arrest itself, regardless of what the arrestee knew. Whether the arrested person knew before he was arrested that the police were present is a fact that precedes, and is therefore irrelevant to, that risk; consequently, what officers might be able to discern about his knowledge

before they arrested him is similarly immaterial to their need to search.

A person who, like respondent, is arrested after exiting his vehicle is unlikely to be significantly less angry or less motivated to reach for a weapon or destroy evidence because he only learned the police were there when they arrested him, as opposed to having seen them through his window before getting out. In fact, the lower court's rule in this case increases the risk of harm to officers and evidence by providing officers with an incentive to confront suspects while still in their cars, and thus closer to any weapons or evidence contained therein, rather than (as might be wiser in some situations) waiting for the suspect to move at least some distance from his car. It could also provide suspects with a similar incentive to leave their vehicles quickly in order to keep them from being searched. Both incentives pose risks to officers' ability to control the scene of the arrest.

Nor should the fact that the arrestee is handcuffed and placed in the back seat of a nearby police car, as was the case here, negate the authority to conduct a *Belton* search. In *Belton*, the Court made clear that its bright-line rule applies to cases where no real threat to officer safety or evidence exists. Furthermore, concern for officer safety and evidence preservation does, in fact, continue to exist even when an arrestee is handcuffed in the backseat of a police car at the time of the search; the use of handcuffs and placement in a nearby vehicle may reduce, but do not eliminate, the danger to the arresting officer.

ARGUMENT

I. Whether Police Officers Can Tell If The Recent Occupant Of A Vehicle Knew Of Their Presence Before His Arrest Should Not Control Whether Officers May Conduct A *Belton* Search After They Have Arrested Him.

The ability of an officer to search a car incident to an arrest under *Belton* is premised on risks that arise from arrests generally. The lower court's ruling that police officers need to determine whether a suspect was aware of their presence before that arrest took place assigns controlling weight to an irrelevant factor and requires officers in the field to perform a difficult and nuanced evaluation of that irrelevant factor before deciding whether they may act to protect themselves and any evidence in the car. The Court should reject the lower court's rule as contrary to the concerns underlying *Belton*, as well as to common sense.

A. *Belton* Categorically Permits Police To Search The Passenger Compartment Of A Vehicle Incident To The Lawful Arrest Of A Recent Occupant.

The Fourth Amendment generally prohibits police from conducting a search without first obtaining a warrant. See *Belton*, 453 U.S. at 457. However, recognizing that "'the exigencies of the situation' may sometimes make exemption from the warrant requirement 'imperative,'" this Court has identified several exceptions to the warrant requirement. *Id.* (quoting *McDonald* v. *United States*, 335 U.S. 451, 456 (1948)). One such exception is a search incident to arrest. See *Chimel* v. *California*, 395 U.S. 752, 763 (1969).

In *Chimel*, the Court held that, after arresting a suspect, police may search "the arrestee's person and

the area 'within his immediate control.'" *Ibid.* The Court provided two reasons for its holding. First, a search incident to arrest permits the officer "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape." *Ibid.* Second, a search incident to arrest helps to prevent the arrestee from destroying evidence. *Ibid.*

In *United States* v. *Robinson*, 414 U.S. 218 (1973), the Court applied *Chimel* to the search of a defendant's person after he had been ordered out of his car and arrested. When the arresting officer felt an object in Robinson's coat pocket, he pulled the object from the pocket, revealing it to be a "'crumpled up cigarette package.'" *Id.* at 222-223. Still unsure what the cigarette pack contained, the officer opened the pack and found heroin. *Ibid.*

The *Robinson* Court upheld the search as incident to a valid arrest. 414 U.S. at 236. In doing so, the Court rejected a case-by-case analysis of "whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest." *Id.* at 235. Rather, the Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; *that intrusion being lawful, a search incident to the arrest requires no additional justification.*

Id. at 235 (emphasis added). Accordingly, in upholding the search of the defendant's person, the Court found it

irrelevant that the officer "did not indicate any subjective fear" of the defendant, or that the officer "did not himself suspect that [the defendant] was armed." *Id.* at 236.

In *Belton*, the Court considered whether the passenger compartment of a car fell "within [the] immediate control" of an arrestee who had been the recent occupant of the car. *Belton*, 453 U.S. 454. In *Belton*, a police officer pulled over a speeding car. *Id.* at 455. While speaking with the occupants, the officer smelled marijuana and saw an envelope on the floor of the car with markings suggesting that it contained marijuana. See *id.* at 455-456. The officer ordered the men out of the car, arrested them for possession of marijuana, and split them up into four separate areas of the road. See *id.* at 456. The officer then searched the car and discovered cocaine in the pocket of the defendant's jacket in the back seat. *Ibid.*

In approving the search, the *Belton* Court blended the concerns for officer safety and the preservation of evidence expressed in *Chimel* with *Robinson's* preference for a rule that was easy for officers to apply and did not depend on the subtler facts of a given situation. The Court observed that "'a single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). "'A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.'" *Belton*, 453 U.S. at 458 (quoting Wayne R. LaFave, *"Case-By-Case*

Adjudication" Versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP. CT. REV. 127, 141).

In addressing the proper scope of a vehicle search incident to arrest, the Court noted that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Belton*, 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763). Relying on this generalization about arrestees and their vehicles, the Court announced the following rule, meant to be of general application: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnote omitted). Because the defendant's "jacket was located inside the passenger compartment of the car in which the [defendant] had been a passenger just before he was arrested," the Court held that the jacket was "'within the arrestee's immediate control'" and the search thus complied with the Fourth Amendment. *Id.* at 462-463.

The *Belton* rule therefore requires officers to make only a simple and limited factual determination before proceeding to search the interior of a vehicle: whether the person they had arrested was in the vehicle or had recently left it and remained nearby. The Court thus avoided the need for police officers to make difficult determinations on the fly as to whether *their particular situation* posed the dangers presented by arrests generally.

B. *Belton* Applies Regardless Of Whether The Arrestee Was Aware Of The Police Before Exiting His Vehicle.

The Arizona Court of Appeals held that *Belton* does not authorize the search of respondent's car because *Belton* "applies only when 'the officer initiates contact with the defendant * * * while the defendant is still in the automobile.'" Pet. App. A-6 (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). The court found that, unlike *Belton*, the record here does not demonstrate that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet. App. A-5. Instead, according to the court, respondent "voluntarily—that is, not in response to police direction—stopped his vehicle, exited it, and began to walk away from it." *Ibid.*

The knowledge requirement imposed by the court of appeals will not make much difference in cases where an officer has openly stopped the vehicle himself, such as in a traffic stop like the one in *Belton*. Nonetheless, as the facts of this case demonstrate,[3] arrests of the recent occupants of vehicles can occur in other factual contexts, such as during undercover operations or where, as here, the suspect by his own actions places himself in contact with officers before he is arrested. These situations present the same dangers to officers and evidence as do arrests made after traffic stops. Therefore, in these contexts the lower court's holding both undermines *Belton*'s bright-line rule and is irrelevant to its underlying rationale.

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[3] See also *Thomas* v. *State*, 761 So. 2d 1010 (Fla. 1999), cert. dismissed, 532 U.S. 774 (2001).

1. Requiring police to determine whether an arrestee was aware of a police presence before exiting his vehicle undermines *Belton*'s bright-line rule.

The Court has characterized law enforcement's interest in bright-line, "readily administrable rules" as "essential," recognizing their value to police officers faced with the need to make quick Fourth Amendment calls:

> [A] responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review. Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made.

Atwater v. *City of Lago Vista*, 532 U.S. 318, 347 (2001) (citations omitted). The lower court's requirement that officers try to figure out whether their arrestee knew they were there before they arrested him in order to search his car presents precisely the type of "sensitive" determination that the Court has sought to avoid requiring of officers in the field.

The lower court's opinion itself demonstrates that such an inquiry is incompatible with the notion of a clear and simple rule. In finding that the record did not establish whether the officer initiated contact with respondent by shining a flashlight into his car, the court identified a long list of circumstantial and sometimes subjective factors that could have influenced that

determination, including (a) the distance between respondent's vehicle and the officer, (b) the lighting at the scene, (c) whether respondent would have seen that a light had been shined into his vehicle, (d) whether respondent would have identified that light with the police, and (e) whether respondent had seen police officers or any other sign of police activity at the residence. Pet. App. A-7.

This kind of case-by-case analysis, difficult enough for appellate judges to make clearly and simply, would be even more so for police officers to undertake in deciding whether they may search the vehicle of a recent occupant incident to arrest. The typical arrest scenario provides the officer with little time to consider the "'social and individual interests involved.'" *Belton*, 453 U.S. at 458 (quoting *Dunaway*, 442 U.S. at 213-214). The complexity and circumstantial nature of this inquiry, like most that involve assessing knowledge, renders it out of place in these circumstances. Police officers will frequently have little way of knowing whether an arrestee "was or should have been aware" of the police when he exited his vehicle, as the lower court would require. Pet. App. A-5.

Given the difficult and circumstantial nature of the inquiry conducted by the lower court, litigation about the arrestee's awareness of a police presence is likely to lead to disparate results, and would not provide officers with "a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater*, 532 U.S. at 347. In sum, the lower court's requirement of a complex case-by-case inquiry into the state of mind of the arrestee does not provide officers with a "single, familiar standard [that] is essential to guide police officers," *Belton*, 453 U.S. at 458, and therefore undermines *Belton*'s rule.

2. Concerns for police safety and evidence preservation arise from the arrest, regardless of whether the arrestee was aware of the police before exiting his vehicle.

Whether an arrestee exits his vehicle before becoming aware of a police presence is irrelevant to the concerns underlying the *Belton* rule—officer safety and evidence preservation. As the Fourth Circuit recently put it, "[d]anger to an officer from an arrest and the need to discover and preserve evidence continue to be concerns regardless of whether the arrestee exits the automobile voluntarily or because of confrontation with an officer." *United States* v. *Thornton*, 325 F.3d 189, 195 (4th Cir. 2003); accord *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999); *People* v. *Savedra*, 907 P.2d 596, 601 (Colo. 1995). The justification for the intrusion of a *Belton* search arises from the risks inherent in arrest situations. Compare *Belton* with *Knowles* v. *Iowa*, 525 U.S. 113 (1998) (*Belton* search not justified where traffic stop results in citation but no arrest made). That arrest is thus all that is necessary to justify the intrusion. *Belton*, 453 U.S. at 461. Accordingly, whether the police have a need to take measures to prevent a suspect from retrieving a weapon or destroying evidence in his car *after* he has been arrested is not dependent on what he knew *before* he was arrested.

The lower court's rule in this case provides both police officers and arrestees with perverse incentives that are antithetical to the concerns underlying *Belton*. For arrestees, the lower court's rule would provide a motive "to avoid lawful searches of their vehicles by rapidly exiting or moving away from the vehicle as officers approached," thereby increasing both the number and difficulty of situations in which officers must decide whether the arrestee was aware of their presence before

leaving the vehicle. *State* v. *Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999); accord *Pettigrew* v. *State*, 908 S.W.2d 563, 570 (Tex. App. 1995); *People* v. *Bosnak*, 633 N.E.2d 1322, 1326 (Ill. App. 1994); *State* v. *Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992). In addition, encouraging subjects to exit their cars as police approach would diminish officers' abilities to control the movements of individuals at police encounters, thus heightening concerns for officer safety. See *Maryland* v. *Wilson*, 519 U.S. 408, 413 (1997); *Michigan* v. *Summers*, 452 U.S. 692, 702-703 (1981); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977).

For police officers, by contrast, the lower court's rule provides an incentive to approach all suspects in cars overtly, so as to be sure (in the only way they could be sure) that, if an arrest were made, they would be able to protect themselves and any evidence present by conducting a *Belton* search. The lower court's rule thus does not account for the fact that"when encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight." *Thornton*, 325 F.3d at 195.[4] Whether or not that tactic is the safer one under a particular set of circumstances will be a hard enough decision for officers to make in the fleeting moments of a field encounter without requiring their ability to protect themselves under *Belton* to hang in the balance as well.

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[4] See also *People* v. *Fernengel*, 549 N.W.2d 361, 364 (Mich. App. 1996) (O'Connell, J., dissenting) (police acted prudently by waiting for the defendant to get out of his vehicle before making an arrest because this procedure "negated any possibility that defendant would use [the] weapon" in his car).

In addition to decreasing the risk of harm to police and evidence, waiting until the suspect exits his car to confront him could, in some circumstances, serve other goals. For example, tinted windows or difficult weather or lighting conditions could make it difficult for a police officer to determine whether a vehicle's occupant is the suspect he is looking for. But the lower court's rule encourages the officer to confront the vehicle rather than waiting until the suspect gets out of the car in order to confirm the suspect's identity. The lower court's rule thus would lead to additional unnecessary vehicle stops, actually increasing the number of intrusions onto citizens' liberties. In short, police officers should be provided with the discretion to decide whether the circumstances justify waiting for the suspect to exit his car before alerting the suspect to a police presence, without forfeiting the ability to search the suspect's car incident to the arrest by doing so.

There will, of course, be cases where a *Belton* search is impermissible because the arrest does not take place until the defendant is far removed from his vehicle. See, *e.g.*, *State* v. *Tompkins*, 423 N.W.2d 823, 826 (Wis. 1988) (arrest made fifteen minutes after arrestee exited his car and entered nearby tavern). But in this case, where respondent had taken only a few steps from his car before being confronted by the police, it is clear that he was sufficiently close to his vehicle at the time of his arrest to satisfy the *Belton* rule. See *Thornton*, 325 F.3d at 196 (police officer confronted the arrestee "*within moments*" of exiting his vehicle) (emphasis in original); *United States* v. *Snook*, 88 F.3d 605, 608 (8th Cir. 1996) (arrestee "had just stepped out of his vehicle as the officer arrived"); *People* v. *Bosnak*, 633 N.E.2d 1322, 1327 (Ill. App. 1994) (arrestee had walked ten yards from his car before being confronted by police). Therefore, this case does not require the Court to determine the precise distance between the arrestee and

his car at which point a *Belton* search becomes impermissible.

II. *Belton* Allows A Vehicle Search Incident To Arrest Even If The Arrestee Is Handcuffed In The Back Seat Of A Nearby Police Car When The Search Is Conducted.

Although *amicus* believes that the question upon which the Court granted certiorari in this case is limited to the issues discussed above, some members of the Court have recently expressed interest--in an almost identical case--in an additional issue regarding the execution of vehicle searches under *Belton*. In the event that the Court might find that consideration of this additional issue will aid it in resolving the question presented, *amicus* will address it.

Two years ago, the Court granted certiorari to review a decision of the Florida Supreme Court holding that "'*Belton*'s bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant' while the defendant remains in the car." *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001) (quoting *Thomas* v. *State*, 761 So. 2d 1010, 1014 (Fla. 1999)). Although the Court ultimately dismissed the writ of certiorari for want of jurisdiction, 532 U.S. at 781, several members of the Court inquired at oral argument in *Thomas* whether *Belton* would support the search of the defendant's vehicle in that case even though the defendant was handcuffed and had been taken into a nearby house at the time the police searched his car in the driveway. In the ensuing colloquy, that situation was compared to the one in this case, in which respondent was arrested and placed in a nearby police car. See, *e.g.*, 4/25/01 Tr. of Oral Argument, *Florida* v. *Thomas*, No. 00-391, at 12-13, 21-22.

Here, as in *Thomas*, the question presented is limited to whether a vehicle search is valid under *Belton* where the arrestee exits his car unaware of a police presence. Nevertheless, given the Court's interest expressed during the *Thomas* argument, *amicus* will also address whether *Belton* should apply where, as here, the arrestee is placed in a nearby police car in handcuffs before the vehicle search is conducted.

Amicus acknowledges that there are factual differences between this case and *Belton*. In *Belton*, a lone police officer pulled over a car with four occupants. 453 U.S. at 456. In this case, several officers were present at the arrest of respondent. Despite this factual difference, however, the *Belton* rule should still apply to this case. First, *Belton* applies even in cases where no threat to officer safety or evidence exists. Second, concerns for officer safety and evidence preservation persist where the arrestee is handcuffed in the back seat of a police car at the time of the search.

A. *Belton*'s Bright-Line Rule Applies Regardless Of Whether There Is Actual Danger To Officers Or Evidence.

In announcing its bright-line rule, the *Belton* Court recognized that the concern for officer safety and evidence preservation would not exist in every instance in which a vehicle's occupant was arrested. The Court noted that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact *generally, even if not inevitably*, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary [item].'" 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763) (emphasis added). Basing its decision specifically on that very "generalization," as well as the need for a rule of similarly general application, *Belton*, 453 U.S. at 460, the Court announced a rule that was

intended to apply to *all* vehicle searches incident to arrest, regardless of the particular circumstances surrounding the arrest. It thus would be inconsistent with *Belton*'s bright-line rule to require a showing that the arrestee presented a particularized risk of harm to the officer or to the evidence before permitting the officer to search the arrestee's vehicle.

Further indication that the existence of an actual risk of harm to a police officer or to evidence does not dictate the officer's ability to search the vehicle is found in *Belton's* holding that officers searching a vehicle incident to arrest may open containers inside the vehicle even when the containers "could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested." 453 U.S. at 461. The *Belton* Court relied on *Robinson*, which had explained that the authority to search incident to an arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect," but instead was a product of the arrest itself. *Robinson*, 414 U.S. at 235; *Belton*, 453 U.S. at 461. Just as a police officer may open a container in a vehicle even though the container "could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested," *Ibid.*, so too an officer may search a vehicle incident to arrest independent of his or her subjective belief that the vehicle contains weapons or evidence or that the arrestee would or could actually get to it. In other words, once the officer has conducted a lawful arrest of a vehicle's recent occupant, the officer may then search the vehicle regardless of "what a court may later decide was the probability * * * that weapons or evidence would in fact be found" in the automobile. *Ibid.*

The lower courts have recognized that *Belton* "is a bright-line rule that may be invoked regardless of whether the arresting officer has an actual concern for safety or evidence." *United States* v. *McLaughlin*, 170 F.3d 889, 891-892 (9th Cir. 1999). Indeed, "the great weight of authority" in the lower courts "holds that *Belton*'s bright-line rule applies even in cases where the arrestee is under physical restraint and at some distance from the automobile during the search." *United States* v. *Doward*, 41 F.3d 789, 791 n.1 (1st Cir. 1994); accord *United States* v. *Wesley*, 293 F.3d 541, 549 (D.C. Cir. 2002); *McLaughlin*, 170 F.3d at 891-892; *United States* v. *Franco*, 981 F.2d 470, 472 (10th Cir. 1992); *United States* v. *Karlin*, 852 F.2d 968, 970 (7th Cir. 1988); *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 140 (Va. 1999); *People* v. *Bailey*, 639 N.E.2d 1278, 1282 (Ill. 1994); *State* v. *Fry*, 388 N.W.2d 565, 574 (Wis. 1986).

In *Karlin*, for example, the defendant argued that *Belton* did not apply to permit the search of his van because, unlike the arrestees in *Belton*, he was handcuffed in the backseat of a police car when officers conducted the search. 852 F.2d at 970. The Seventh Circuit disagreed, stating that if the factual differences between the defendant's arrest and *Belton* were "to control, the [Supreme] Court's preference for a straightforward rule for guidance of police officers and avoidance of hindsight determinations in litigation would be frustrated." *Id.* at 970-971. The court noted that acceptance of the defendant's position "would require a factual determination in each instance of how thoroughly the arrestee had been secured and his distance from the vehicle." *Id.* at 971. Because such a determination would be inconsistent with *Belton*'s bright-line rule, the court upheld the search of the defendant's van without finding the need to determine "whether the officer had rendered [the defendant] incapable of reaching into the van." *Id.* at 971-972.

The Seventh Circuit was correct in pointing out the incompatibility between *Belton*'s bright-line rule and a case-by-case examination of "how thoroughly the arrestee had been secured and his distance from the vehicle." *Karlin*, 852 F.2d at 971. Individualized determinations would require police officer to balance innumerable factors, such as the number of officers at the scene, the number of arrestees in the vehicle, whether the arrestee was handcuffed at the time of the search, the distance from the arrestee to his vehicle, the arrestee's physical strength, whether the arrestee has a propensity for violence, and the proximity of any confederates of the arrestee. This type of individualized inquiry fails to provide police officers with the "single, familiar standard" that allows officers to predict when they may search a vehicle incident to arrest, and thus is incompatible with *Belton*'s bright-line rule. 453 U.S. at 456.

B. Concern For Police Safety And Evidence Preservation Continues To Exist When The Arrestee Is Handcuffed In The Back Seat Of A Police Car.

The risks to officers and evidence generated by an arrest situation that the *Belton* Court relied on in announcing its general rule are still sufficiently present to justify a search of an arrestee's vehicle even where, as here, the arrestee has been handcuffed and placed in the backseat of a police car at the scene. Experience has taught NAPO's members that, while such confinement may reduce the risk of aggressive action by the arrestee, it does not by any means eliminate it, nor does it reduce the danger posed by nearby confederates of the arrestee. The purposes behind the *Belton* rule, namely simplicity and safety, would thus be well served by retaining the ability to conduct a search under that rule while the arrestee remains at the scene, even if confined.

Every arrest "present[s] a risk of danger to the arresting officer. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger." *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) (citation omitted). All too often the risk of danger to an arresting officer turns to reality: about one-third of the 644 law enforcement officers feloniously killed in the line of duty between 1991 and 2000 were killed during arrest situations. FBI, *Uniform Crime Reports: Law Enforcement Officers Feloniously Killed and Assaulted 2000*, Figure 3, Circumstances at Scene of Incident, 1991-2000. Indeed, this Court has recognized that the risk of harm to an arresting officer increases when the circumstances of the arrest involve a vehicle. See, *e.g.*, *Wilson*, 519 U.S. at 413; *Michigan* v. *Long*, 463 U.S. 1032, 1048 n.13, 1049 (1983); *Robinson*, 414 U.S. at 234 n.5.

Handcuffing an arrestee and placing him in a nearby police car, while a common practice, does not eliminate the danger to the arresting officer. Regrettably, "[t]he limitations of handcuffs' effectiveness are widely known to law enforcement personnel." *United States* v. *Sanders*, 994 F.2d 200, 209 (5th Cir. 1993) (describing cases where handcuffed arrestees injure police officers). "[L]ike any mechanical device, handcuffs can and do fail on occasion." Moreover, handcuffs "do not impair a person's ability to use his legs and feet, whether to walk, run, or kick." *Ibid.* And although handcuffs *limit* a person's ability to use his hands and arms, "the degree of the effectiveness of handcuffs in this role depends on a variety of factors, including the handcuffed person's size, strength, bone and joint structure, flexibility, and tolerance of pain." *Ibid.*

Thus, although difficult, "it is by no means impossible for a handcuffed person to obtain and use a weapon concealed on his person or within lunge reach,

and in so doing to cause injury to his intended victim, to a bystander, or even to himself." *Sanders*, 994 F.2d at 209. Escape from handcuffs and a patrol car are not nearly impossible feats, and, if accomplished, present extraordinary risks to officer safety and evidence if a *Belton* search has not been conducted. In that situation the escapee would present more than the usual dangers; if weapons or evidence were in the nearby vehicle, he would have the additional advantage over the officer of knowing those facts.

Furthermore, the danger posed by the arrestee is not the only risk officers face during and after an arrest. Police also must be concerned about the possibility that the arrestee has confederates in the area. In this case, for example, respondent was arrested in the driveway of his home, with others in the area who might have known of the contents of respondent's car (and certainly knew as much or more about those contents than the police did). Thus, "[i]t was certainly reasonable for the police to have believed that [respondent] *or others* could possibly gain access to a weapon or destroy evidence in the vehicle." *United States* v. *Willis*, 37 F.3d 313, 317 (7th Cir. 1994) (*Belton* permitted search of defendant's car although he was handcuffed and in the backseat of a police car at the time of the search where "[t]here were also many individuals who were congregated in the schoolyard near the vehicle") (emphasis added); see also *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994); *United States* v. *Arango*, 879 F.2d 1501, 1505 (7th Cir. 1989) ("[T]he presence of an arrestee mandates the need to protect both persons and evidence from the often imprudent and unpredictable actions of a person just arrested, *or perhaps even a nearby confederate*") (emphasis added).

Finally, limiting *Belton* to situations where the arrestee is not handcuffed could increase the risk of

harm to police and the public. Given the "often competitive enterprise of ferreting out crime," some police officers seeking certainty might put themselves and the public at risk by not handcuffing the arrestee and keeping him near his car so that they could search it. See *Summers*, 452 U.S. at 703 n.18. There is simply no need to create a disincentive to reduce risk by creating tension between concerns for safety and criminal investigation.

In light of the risks inherent in arrest situations, police officers should be able to neutralize the scene of arrest by taking all reasonable precautions, including both the common practice of handcuffing the arrestee and placing him in the back seat of a nearby police car and searching the arrestee's vehicle. Choosing the former should not vitiate the ability to enhance safety further by doing the latter as well.

Amicus acknowledges that there will likely be cases where the arrestee is so incapacitated, or so removed, from the scene of the arrest, and the officers so otherwise in control, that the rationale for a *Belton* search would be entirely absent, although determining when that has occurred has not turned out to be an easy task, even for courts examining the situation in contemplative hindsight. Compare, *e.g.*, *United States* v. *McLaughlin*, 170 F.3d 889, 893 (9th Cir. 1999) (upholding vehicle search initiated after police drove arrestee away from the scene) with *United States* v. *Lugo*, 978 F.2d 631, 634 (10th Cir. 1992) (invalidating vehicle search under similar circumstances). Police officers might, if circumstances warrant, choose to remove an arrestee entirely from the scene before they have conducted a vehicle search, considering his mere presence to pose a greater risk than nearby confinement and a *Belton* search could dispel.

This case, though, presents a more common scenario, in which respondent remained nearby, though confined in a police car. Those measures did not eradicate the risk that he or a confederate might have grabbed the gun or the drugs that were, in fact, in his car. Therefore, concern for officer safety and evidence preservation existed in this case even though respondent was handcuffed in the back seat of a police car while the search of his car was conducted.

CONCLUSION

The decision of the Arizona Court of Appeals should be reversed.

Respectfully submitted.

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Case No. 02-1019

In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

ON WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF FOR THE STATES OF FLORIDA, ALABAMA, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, INDIANA, IOWA, OKLAHOMA, RHODE ISLAND, SOUTH CAROLINA, TEXAS, UTAH, AND VERMONT AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The question presented in Arizona's petition for writ of certiorari was as follows:

> When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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INTEREST OF THE AMICI CURIAE

This case presents the question of whether the ability to conduct a search incident to an arrest of a recent occupant of a motor vehicle conducted pursuant to *New York v. Belton* may be conditioned upon a law enforcement officer "initiating contact" with the arrestee. The Court's resolution of this question will affect the practices of law enforcement officers nationally and, in particular, those states and federal jurisdictions whose courts have held that *Belton* may be so conditioned and limited. Disposition of this case on its merits will affect the admissibility in state and federal prosecutions of evidence obtained by law enforcement officers as the result of the

frequently occurring search incident to the arrest of a recent occupant of a motor vehicle. Also, resolution of this issue will help avoid inconsistent application of the *Belton* rule in the lower courts as well as give guidance to the police officer in the field.

STATEMENT OF THE CASE

The material and operative facts, as stipulated by the parties and set forth by the trial judge, were reproduced by the Arizona Court of Appeals as follows:

> At the hearing on Gant's motion to suppress, the court stated:
>
> > Are any of the facts in issue? It seemed to me that from your respective briefs, that there didn't seem to be any disagreement. As I understand the facts-and let me repeat what I understand they are: That this arose out of a report of possible narcotic activity; . . . police went to the residence, knocked on the door. The defendant answered. . . .
> >
> > . . . .
> >
> > . . . [The police] ran a computer check on Rodney Joseph Gant and found that he was wanted on a suspended driver's license and, also, an outstanding warrant for failure to appear.
> >
> > . . . .
> >
> > . . . [The police] left and then came back to the residence, found a man and a woman around the residence. The woman had a crack pipe. The man, they didn't apparently find any contraband on him. Then the defendant arrived, driving a vehicle, and the officer, as

> the car pulled into he driveway, shined his flashlight into he car, recognized Mr. Gant as the individual he had previously met at the door and identified him as Mr. Gant.
>
> And as the officer was walking toward the vehicle, Mr. Grant got out of the vehicle and started walking toward the officer when the officer called him by name, and he responded that that was who he was. And the officer took him in custody for the outstanding warrant and suspended driver's license, having seen him operating a motor vehicle. . . . [T]here's no question that [the officer] could legally arrest and did lawfully arrest the defendant on the outstanding warrant and for operating a motor vehicle without a driver's license.
>
> Mr. Gant was removed from he vehicle--from the vicinity of the vehicle to the officer's patrol car and placed in the back of the patrol car, and the officers then did a search of the defendant's vehicle, found a weapon and found the jacket. And, apparently, feeling the jacket, felt something that they felt might be drugs and took it out of the pocket and found cocaine. (Pet. App. A2-A3)

Based upon these facts, the Arizona Court of Appeals aligned itself with those courts which require that the police initiate contact with the arrestee as a condition precedent to the valid conduct of a search incident to the arrest of a recent occupant of a motor vehicle. *State v. Gant*, 202 Ariz. 240, 43 P.3d 188 (App. 2002) (Pet. App. A6).

SUMMARY OF ARGUMENT

The determination by the Arizona Court of Appeals that the Fourth Amendment forbids a search incident to a valid custodial arrest of a recent occupant, absent the condition that the law enforcement officer initiates contact with the arrestee, is erroneous. Such a conclusion conflicts with decisions of the Court and erects an inflexible barrier to effective law enforcement. The decision ignores that the arrest itself provides the justification for a search of the arrestee's vehicle.

In so deciding, the Arizona Court of Appeals added a condition or requirement to *Belton* which is neither contemplated nor compelled by that decision or any comparable fact scenario. The Arizona Court of Appeals rejected precedent which embraces the bright-line rule in *Belton* and instead adopted a diametrically opposite requirement of a case-by-case examination of the facts presented. This latter approach is a hindrance to effective and practical law enforcement because it requires, depending on the factual scenario, a police officer to divine the subjective intent of the arrestee. Under this approach a search could only be conducted of an arrestee who voluntarily exited his vehicle prior to initiation of contact by the officer if that arrestee perceived the police presence. This will likely result in inconsistent application of the law in the lower courts.

ARGUMENT

THE FOURTH AMENDMENT DOES NOT REQUIRE THAT A LAW ENFORCEMENT OFFICER INITIATE CONTACT WITH AN ARRESTEE BEFORE A VALID WARRANTLESS SEARCH OF THE ARRESTEE'S VEHICLE INCIDENT TO THE ARREST MAY BE CONDUCTED.

In *New York v. Belton*, 453 U.S. 454, 460 (1981), the Court created the bright-line rule that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of the arrest, search the passenger compartment of that automobile." *Sub judice*, the Arizona Court of Appeals determined that the *Belton* bright-line

rule does not extend to a situation where the first contact the defendant has with the officer occurs after the defendant has exited the vehicle of his own accord. It is submitted that the correct and more logical view is: If a valid custodial arrest of an occupant or recent occupant of a motor vehicle has been effected, a contemporaneous search of that vehicle incident to that arrest may be undertaken. Any requirement that the officer initiate contact with the arrestee is compelled neither by *Belton* nor by other persuasive authority nor logic.

In *Belton*, the Court opined that there be straightforward rules to guide police officers in the exercise of their duties: "'[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *Id.* at 458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)). Indeed, the *Belton* bright-line rule exists in order to apprise law enforcement of those factors within which they apply and permit consistent application of the rule to circumstances they encounter. Whether a valid search of a recent occupant's vehicle incident to arrest is to be conditioned on the police officer initiating contact with the arrestee serves only to blur, if not totally erode, the *Belton* principle. It is constitutionally unnecessary to differentiate between an arrest of a recent occupant who may have exited his vehicle of his own volition and a recent occupant who was initially confronted by a police officer. The same justification for the search exists, namely the concern for officer safety and the need to preserve evidence, regardless of whether the police officer initiates contact with the arrestee. This justification is presumed whenever there is an arrest and there is no need to inquire whether an officer has concern that the arrestee may be armed or whether the arrestee is concealing evidence. *United States v. Robinson*, 414 U.S. 218, 235-36 (1973). It is the arrest itself, and not who initiated contact with whom, which is the significant constitutional basis to permit a warrantless search. Thus, it is not surprising that in *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983), the Court noted that an arrest is a significant event which, in and of itself, justifies an "automatic" search incident to that arrest. The Court stated that a *Belton* search would have been proper had the defendant, who had already exited his vehicle before the officers met him, been arrested. *Id.* at 1035 n.1.

A. A Contemporaneous Search of a Vehicle Incident to the Arrest of a Recent Occupant of That Vehicle is Constitutionally Reasonable Irrespective of Whether the Police Initiated Contact With the Arrestee.

In the context of a search incident to arrest, the key question ultimately is one of reasonableness. This Court has expressed a concern and recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to the police officers. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court held that police may order persons out of an automobile during a traffic stop and may frisk those persons if there is a reasonable belief that they are armed and dangerous. In *Maryland v. Wilson*, 519 U.S. 408 (1997), this Court extended the *Mimms* rule to passengers as well as drivers. In these traffic stop scenarios, the liberty interests of the persons detained are significantly greater than those of a person who has actually been placed under custodial arrest. Therefore, in the context of a search incident to arrest, it is reasonable for the police to conduct a search of a vehicle for purposes of officer safety. Likewise, concern for the safety of police officers in the context of protective sweeps made in conjunction with an in-home arrest has been addressed and upheld. *Maryland v. Buie*, 494 U.S. 325 (1990). If it is reasonable for the police to be able to protect themselves in homes, it is certainly reasonable for the police to be able to protect themselves on the street when they place an individual under arrest. This is true regardless of whether they initiate contact with the arrestee or not. *Belton* applies in a situation where the defendant has been handcuffed and placed in a squad car. *See, e.g., United States v. Karlin*, 852 F. 2d 968 (7th Cir. 1988). Certainly, concern for officer safety does not dissipate upon removal of the arrestee from the immediate vicinity of his vehicle where, for example, confederates are present at the scene. Officer safety concerns exist in a custodial arrest situation regardless of whether a police officer initiated contact.

Recognition of the volatility of the arrest scenario likely explains the nearly universal acceptance of the validity of a *Belton* search where the arrestee has already been removed from the immediate vicinity. Indeed, *Belton* searches can, and by practical necessity invariably do, take place after the suspect is outside of the car. Further, the facts of *Belton* demonstrate

that an individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest. These recognitions serve to dispel reliance upon the *Chimel*[1] line of cases which require confinement of a search of a vehicle incident to arrest to the area within the arrestee's ability to lunge and grab. Because it is a given that *Belton* applies once the arrestee is out of the vehicle (and, indeed, where the arrestee is most often restrained), the question remains as to why it should make any difference whether the police initiate contact with the arrestee while he is still in his vehicle. The answer of course is that it does not make a difference because it is the act of arrest, and not where the arrestee is situated, which justifies the search.

Further, the Arizona Court of Appeals determined that *Belton* should not apply in this case for the reason that Gant got out of the car before the police officer could meet him.[2] Once Gant was placed under custodial arrest outside of the vehicle, as was Roger Belton, the same concerns justifying the Belton search exist – the threat to officer safety and destructible evidence. Hence, the applicability of *Belton* should not be dependent on the reason Gant exited his vehicle or whether first contact was initiated by the police. When Gant arrived at a residence where police were investigating drug-related activity, the warrant for his arrest already existed. Yet, because the officer was unable to confront Gant before he exited the vehicle, it is contended by respondent that a search of the vehicle incident to a valid arrest is impermissible. The considerations supporting *Belton*'s bright-line rule are squarely implicated when the police suddenly discover they are dealing with a person for whom an arrest warrant is outstanding; the

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[1] *Chimel v. California*, 395 U.S. 752 (1969), held that a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area within which he may reach.

[2] This determination highlights the validity of the Supreme Court of North Dakota's concern that "police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search." *State v. Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999), *infra* at pp. 14-15.

dangerous and volatile situation arising when one is arrested exists whether or not the arrestee voluntarily exits a vehicle before initiation of contact with the police.

Belton's bright-line rule is not without limits. Indeed, certain factual situations will present temporal and spatial expansion that will render a search unreasonable, but whether the police officer initiated contact is not one of the factors to consider in the reasonableness calculus.[3]

B. The *Belton* Bright-Line Rule is a More Sensible, Logical, and Practical Approach than is the "Who Initiated Contact" Test.

Those federal courts which have adopted the *Belton* bright-line rule rather than the "who initiated contact" rule reflect the more reasonable and workable approach. For example, the Fourth Circuit has recently weighed-in on this issue and has explicitly rejected the limiting of *Belton*'s bright-line rule to cases in which the law enforcement officer initiates contact with the arrestee. In *United States v. Thornton*, 325 F.3d 189, 195 (4th Cir. 2003), the court, in a well-reasoned opinion, observed that:

> ... [T]he historical rationales for the search incident to arrest doctrine – "the need to disarm the suspect in

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[3] When examining the temporal and spatial matters which may arise, the ultimate question is one of reasonableness. In order to invoke the *Belton* bright-line rule, it is submitted that the temporal issues could be resolved by resort to the following test: Whether the officer knows or had reason to know the arrestee recently exited the vehicle. Most often the officer "knows" that the arrestee recently exited the vehicle because the officer actually witnesses the event. An officer would have reason to know that the arrestee recently exited the vehicle if, for example, the vehicle is running and the arrestee is leaning on the car. The spatial issues could be resolved by resort to the following: The arrestee must be spatially proximate to the vehicle at the time of contact with the police or when the arrest is effected. This distance could be viewed as the distance from which the arrestee could reach the vehicle should he struggle and get away from the police. Factual scenarios which satisfy these precepts should deem a *Belton* search reasonable.

order to take him into custody" and "the need to preserve evidence for later use at trial" – do not permit the limitation on the Belton rule that the Sixth Circuit has adopted[4].... (citation omitted). "Danger to an officer" from an arrest and the "need to discover and preserve evidence" continue to be concerns regardless of whether the arrestee exits the vehicle voluntarily or because of confrontation with an officer. (citations omitted)

... [The] proposed limitation of the *Belton* rule would raise serious safety concerns for law enforcement personnel. A rule that requires officers to actually confront or signal confrontation with an arrestee while the arrestee is in the automobile, in order to justify a search of the automobile incident to arrest, could very well endanger an officer. For instance, we can certainly imagine the hesitancy of an officer to activate his lights and sirens if the officer encounters the arrestee while conducting undercover surveillance in an area. Moreover, when encountering a dangerous suspect, it may often be safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon of a means of flight. Mandating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others. We decline to require officers to make this choice....

In *United States v. Snook,* 88 F.3d 605 (8th Cir. 1996), a police officer received information from the dispatcher that a warrant was outstanding for Snook's arrest and that Snook could be found at a particular location. Upon arriving at that location the officer saw Snook who was just stepping out of his

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[4] *See United States v. Hudgins*, 52 F.3d 115 (6th Cir. 1995), *infra at n.6.*

vehicle. The court upheld a search of the vehicle incident to the arrest pursuant to *Belton*. "The fact that Snook had just stepped out of his vehicle as the officer arrived and before his arrest does not alter his status as an 'occupant' of the vehicle." *Snook*, 88 F.3d at 608. In *Snook* and in this case, it was argued that *Belton* did not apply since the defendant had just stepped out of the car and was not an occupant at the time of his arrest. *Snook*, 88 F.3d at 607. The Eighth Circuit explicitly rejected this argument and determined that although Snook stepped out of his vehicle of his own accord, he was an "occupant" for purposes of *Belton*.[5] *See also United States v. Riedesel*, 987 F.2d 1383 (8th Cir. 1993) (despite the defense claim that he was not an occupant at the time of arrest, a *Belton* search was permitted where the defendant was arrested while outside of his vehicle).

In *United States v. Franco*, 981 F.2d 470 (10th Cir. 1992), the court upheld the search incident to an arrest of a defendant who was in a government truck, and not his own vehicle which was in close proximity, at the time of arrest. "Such a search is permissible notwithstanding the fact that the arrestee is out of the automobile and under the control of the officer. Franco was a recent occupant of his vehicle and the arrest was made in close proximity to his vehicle." *Franco*, 981 F.2d at 473 (citation omitted). In reviewing the policy considerations behind *Belton*, the court relied upon its prior decision in *United States v. Cotton*, 751 F.2d 1146 (10th Cir. 1985), and reiterated that the law does not require the arresting officer to sift through all conceivable possibilities that a weapon or evidence may be within reach of an arrestee before a search may be undertaken.

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[5] Under the factual scenario presented, perhaps it would have been more proper for the court to use the term "recent occupant" rather than "occupant." This Court in *Belton* included the term "recent occupant" in its analysis: "While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its **recent occupant**." 453 U.S. at 460.

In *United States v. Arango*, 879 F.2d 1501 (7th Cir. 1989), the defendant was approximately one block from the scene of the crime at the time of his arrest. The court found the search was consistent with *Belton* in order to protect persons and evidence. The court relied on *United States v. Cotton*, *supra* at 1148, quoted in *United States v. Karlin*, 852 F.2d 968, 970 (7th Cir. 1988), and held the law:

> does not require the arresting officer to undergo a detailed analysis, at the time of arrest, of whether the arrestee, handcuffed or not, could reach into the car to seize some item within, either as a weapon or to destroy evidence, or for some altogether different reason. The facts surrounding each arrest are unique, and it is not by any means inconceivable under those various possibilities that an arrestee could gain control of some item within the automobile. The law simply does not require the arresting officer to mentally sift through all these possibilities during an arrest, before deciding whether he may lawfully search within the vehicle.

Arango, 879 F.2d at 1506-07. The decision in *Arango* reaffirmed that *Chimel* and *Belton* "recognize the need to prevent an arrestee or a confederate from destroying evidence located in the area." *Arango*, 879 F.2d at 1505. *See also United States v. Sholola*, 124 F.3d 803 (7th Cir. 1997) (officer asked defendant if he had a car and where it was parked; at time of arrest the defendant was standing near the open driver's side door and could have secured a weapon). Other federal circuits have also sanctioned a *Belton* search where the initial contact between police officer and arrestee occurred only after the defendant had exited the vehicle of his own accord. *See United States v. Bautista*, 731 F.2d 97 (1st Cir. 1984) (upholding a *Belton* search where agents arrested a codefendant who was standing beside an open door of a car); *United States v. Schecter*, 717 F.2d 864 (3rd Cir. 1983) (upholding a *Belton* search where troopers arrived at scene shortly after accident and found defendant "stumbling about" the auto).

A great many state courts have similarly concluded that the reasoning of *Belton* exhibits a more practical policy consideration and promotes an interpretation of the rule which

can be easily applied by the officer in the field: A valid custodial arrest of a recent occupant of a motor vehicle is the only condition required to be met in order to conduct a contemporaneous search of the vehicle incident to that arrest. In *State v. Wanzek*, 598 N.W.2d 811 (N.D. 1999), for example, the court observed:

> We are not persuaded by the line of cases which hold an arrestee is an occupant only when arrested inside the vehicle or where the police initiate contact with the arrestee before the arrestee exits the vehicle. In our view, these decisions undermine the purposes behind the "bright-line" rule established in Belton. The purposes behind Belton were two-fold: to create a single familiar standard to guide police officers in automobile searches and to eliminate the need for litigation in every case to determine whether the passenger compartment of the vehicle is within the scope of a search incident to arrest. (citations omitted) Furthermore, these decisions raise grave public policy issues because they create serious concerns for the safety of officers and others. By drawing a distinction between an occupant and a recent occupant of a vehicle, we would encourage individuals to avoid lawful searches of their vehicles by rapidly exiting or moving away from the vehicle as officers approached. (citation omitted) Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search. (citation omitted) If Belton is read to preclude searches where police contact occurs after the suspect exits the vehicle, suspects could conceal evidence and weapons by merely stepping outside the vehicle whenever they saw an officer approaching. (citations omitted)

598 N.W.2d at 815. The *Wanzek* court held that a valid *Belton* search was conducted where the defendant stepped out of her car immediately prior to arrest and was standing at the rear of the automobile at the time of arrest.

In *Glasco v. Commonwealth*, 513 S.E.2d 137 (Va. 1999), the Supreme Court of Virginia determined that a defendant,

who parked, voluntarily left his vehicle and then walked across the street where the police officer initiated contact, was a recent occupant of a vehicle which could be searched incident to the valid arrest of the defendant. In so holding the court stated:

> [W]e are not persuaded by the authorities that have decided that an arrestee is an occupant or recent occupant of an automobile only if the police officer initiates contact with the arrestee before that person exits the vehicle. That kind of limitation assumes that an individual, who voluntarily gets out of an automobile, is not aware of the presence of a police officer, or having such knowledge, it did not prompt the person to exit the vehicle. We do not believe that those assumptions are always warranted. Moreover, a knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact. That suspect could also conceal evidence in the vehicle and effectively prevent an officer from discovering it by getting out of his or her automobile.

513 S.E.2d at 141-42. Relying upon *Glasco*, the court in *Cason v. Commonwealth*, 530 S.E.2d 920, 924 (Va. Ct. App. 2000), held that the only prerequisites to a lawful search incident to an arrest are that the search is contemporaneous with the arrest and the arrestee is a recent occupant of the vehicle. Although the officer did not see the arrestee on a moped, the officer saw the arrestee, who was carrying a motorcycle helmet, approach from a location in a nearby yard where he later reported the moped was parked. Because the arrestee was a recent occupant of the moped, the moped was validly searched incident to the arrest.

In *People v. Savedra*, 907 P.2d 596 (Colo. 1995), the court upheld a *Belton* search where the arrestee and a passenger had exited the truck when the police drove into the parking lot where the truck was parked. The court determined that:

> The justification for both the Chimel and Belton rules is clarification of the rights and responsibilities of police officers when faced with an evolving confrontation resulting in arrest. The warrant exceptions created by Chimel and Belton are designed

> to permit police officers to protect themselves from harm, and to avoid the destruction of evidence. Given that reasoning, it is illogical to distinguish between someone who is ordered out of a vehicle by a police officer and someone who exits the vehicle anticipating or trying to avoid imminent police contact. In both situations suspects are equally capable of concealing evidence or weapons in the vehicle and may be equally motivated to do so.

907 P.2d at 601.

The court in *People v. Bosnak*, 633 N.E.2d 1322, 1325 (Ill. App. Ct. 1994), assumed the trial judge found that the defendant did not see the officer's emergency lights and that the officer did not make initial contact with the defendant until the defendant parked his car and walked ten (10) yards from it. The court held:

> Where, as in the present case, the officer pursues an automobile based upon his recent observation of the driver's actions, and arrests the driver who has just exited the vehicle and is still within its immediate vicinity, the officer may reasonably consider the driver to be a "recent occupant" within the contemplation of Belton, so that a search of the passenger compartment incident to the arrest will be authorized.

633 N.E.2d at 1326.

Likewise, in *People v. Stoffle*, 3 Cal. Rptr. 2d 257 (Ct. App. 1992), the court therein held that an automobile search incident to arrest is permitted even though the defendant is not actually sitting in the car when arrested. If a close association with the car is demonstrated at the moment of arrest, the arrestee is considered a "recent occupant." This can be shown where the arrestee has acknowledged he owns the car, where the arrestee has recently been physically in the car, or where the arrestee is close enough to the car to continue to have access to it.[6]

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[6] In contrast to the better reasoned decisions discussed above are the cases, including the decision of the Arizona Court of Appeals *sub judice*,

C. Use of the *Belton* Bright-Line Test Obviates the Need to Require Law Enforcement Officers and the Courts To Make Decisions Concerning the Subjective Intent of an Arrestee.

In *Washington v. Chrisman*, 455 U.S. 1, 7 (1982), this Court envisioned the potential dilemma and held:

> Every arrest must be presumed to present a risk of danger to the arresting officer. *Cf.*, *United States v. Robinson*, supra, at 234, n.5, 94 S.Ct. at 476, n.5. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger. Moreover, the possibility that an arrested person will attempt to escape if not properly supervised is obvious. Although the Supreme Court of Washington found little likelihood that [the defendant] could escape from his dormitory room, an arresting officer's custodial authority over an arrested person does not depend upon a reviewing court's after the fact assessment of the particular arrest situation. *Cf.*, *New York v. Belton*, 453 U.S. 454, 458-460, 101 S.Ct. 2860, 2863-2864, 69 L. Ed. 2d 768 (1981); *United States v. Robinson*, supra, 414 U.S. at 235, 94 S. Ct. at 476. (emphasis supplied).

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which unnecessarily rely upon the *Chimel* reasoning rather than the more expansive holding of *Belton*. Emblematic of these cases which have unreasonably limited *Belton* is *United States v. Hudgins*, 52 F.3d 115 (6th Cir. 1995)(holding that "where a defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the cases does not fall within *Belton's* bright-line rule, and a case by case analysis of the reasonableness of the search under *Chimel* becomes necessary"). Cases with similar holdings include *United States v. Strahan*, 984 F.2d 155 (6th Cir. 1993); *United States v. Fafowora*, 865 F.2d 360 (D.C. Cir. 1989); *People v. Stehman*, 783 N.E.2d 1 (Ill. 2002); *Thomas v. State*, 761 So. 2d 1010 (Fla. 1999).

Mandating a court to determine the intent of the arrestee at the time contact is initiated severely limits the holding of *Belton* and, indeed, is contraindicated by the precedent of this Court. Moreover, requiring a police officer to make a subjective decision on the spot as to whether the arrestee exited his vehicle upon perceiving the police presence results in an impracticable test and not the clear cut guidance fostered by *Belton*. The arrest of a recent occupant of a motor vehicle, without more, justifies a search incident to arrest under *Belton*. It is constitutionally immaterial whether the officer initiates contact with the arrestee. To hold otherwise would continue the inconsistent application of the law in the lower courts due to the need for a case-by-case search for the subjective intent of an arrestee.

CONCLUSION

The decision of the Arizona Court of Appeals should be reversed.

Respectfully submitted,

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STATE OF ARIZONA,

Petitioner,

—v.—

RODNEY J. GANT,

Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF ARIZONA

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI*[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights. The ACLU of Arizona is one of its statewide affiliates. Since its founding in 1920, the ACLU has frequently appeared before this Court, both as direct counsel and as *amicus curiae*. In particular, the ACLU has participated in numerous cases addressing the proper scope of the Fourth Amendment.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation founded in 1958 to ensure justice and due process for persons accused of crime; to foster integrity, independence, and expertise of the criminal defense bar; and to promote the proper and fair administration of criminal justice. NACDL strives to defend the liberties guaranteed by the Bill of Rights, and is recognized by the American Bar Association as an affiliate organization.

STATEMENT OF THE CASE

Police officers knew there was an outstanding arrest warrant for respondent, Rodney Gant. The officers saw respondent park his vehicle on a residential driveway. An officer recognized respondent after he shined a flashlight into respondent's vehicle. The officer approached the vehicle as respondent was exiting his car. As respondent was walking toward the police, an officer called his name and respondent acknowledged the officer. Respondent was arrested and placed in a patrol car. A search of respondent's vehicle revealed a weapon and cocaine.

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *amici*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

Respondent was charged with possession of cocaine and possession of drug paraphernalia. The trial court denied his motion to suppress, finding that the search of the vehicle was a valid search incident to arrest. The Court of Appeals of Arizona reversed. The appellate court found that *New York v. Belton*, 453 U.S. 454 (1981), was inapplicable because the facts did not show that respondent "was or should have been aware either of the police presence at the residence as he approached it or of the light the officer shined into his vehicle." Pet.App. A5. The facts revealed that respondent "voluntarily – that is, not in response to police direction – stopped his vehicle, exited it, and began to walk away from it." *Id.*

The court reasoned that *Belton* "applies only when 'the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile).'" *Id.* at A6 (citation omitted). Accordingly, the Court concluded that the search was beyond the permissible scope allowed by *Belton* because the record did not establish that the police contacted respondent while he was inside his vehicle, notwithstanding the officer's shining the flashlight. Pet.App. at A8. The court also ruled that the search violated *Chimel v. California*, 395 U.S. 752 (1969), because the passenger compartment of the vehicle was not within the immediate control of respondent when he was arrested. Pet. App. A8-A9. The Arizona Supreme Court denied review and this Court granted certiorari.

SUMMARY OF ARGUMENT

In *Chimel v. California* and *New York v. Belton*, this Court explained that although searches incident to arrest are an exception to the warrant requirement, an officer's

authority to conduct a search incident to arrest "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" *Chimel,* 395 U.S. at 762, quoting *Terry v. Ohio,* 392 U.S. 1, 19 (1968); *Belton,* 453 U.S. at 457, *quoting Terry*. The two traditional rationales for the search incident to arrest exception are officer safety and preserving evidence. *Knowles v. Iowa*, 525 U.S. 113, 116 (1998). *Chimel* announced that search incident to arrest permits a search of the arrestee's person, as well as "the area 'within his immediate control,'" for weapons or evidence. *Chimel,* 395 U.S. at 763. In *Belton*, noting that it was simply applying *Chimel*'s "immediate control" test to the "particular and problematic" context of arresting a car occupant, this Court held that a valid arrest of an automobile occupant permits a contemporaneous search of the passenger compartment incident to the arrest. *Belton,* 453 U.S. at 460, n.3.

The court below held that *Belton* is limited to cases where an officer initiates contact with a suspect while the person is inside a vehicle, circumstances not present in this case. Pet. App. A6. Petitioner seeks reversal of this ruling and urges a standard that permits an automatic and suspicionless search of a car anytime the police arrest a "recent occupant" of the car. *See* Br. Pet. 7 ("Because Gant was a recent occupant within the meaning of *Belton* when he was arrested and the search was contemporaneous with that arrest, the search was valid."); *id.* at 24 ("the only viable test is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., while he was in close spatio-temporal proximity to his occupancy of the vehicle").

This Court should not adopt petitioner's proposal because it is conflicts with *Chimel*'s and *Belton*'s mandate that search incident to arrest power be "strictly tied to and justified by" the circumstances calling for the search and because it is not a "bright-line" rule. Under petitioner's rule, police could observe a suspect park his car, walk a block

away from it, keeping both car and suspect in view. If they then arrested the suspect, they could search the car because the suspect was a "recent occupant" of the vehicle. Although petitioner's proposal would allow this search, the traditional rationales that justify the search incident to arrest exception – officer safety and preservation of evidence – would not.

Second, petitioner's rule will not promote clarity. Although petitioner criticizes the ruling below for blurring the bright-line of *Belton*, Br. Pet. 14, petitioner's proposal is not a *per se* rule. Petitioner's rule, which requires officers to rely on their "training, experience, and the totality of the circumstances," does not provide any concrete standard for determining recent occupancy. *See id.* at 24-25. Moreover, as the Fourth Circuit recently acknowledged, if *Belton* is extended to cover "recent occupants" of a vehicle, officers and judges will still be required to make individualized assessments regarding an arrestee's temporal and spatial proximity to a vehicle. *United States v. Thornton*, 325 F.3d 189, 196 (4th Cir. 2003) ("The *Belton* rule cannot be stretched so as to render it limitless by permitting officers to search any vehicle from which an arrestee has emerged, regardless of how much time has elapsed since his exit or how far he is from the vehicle when arrested.").

The ruling below is consistent with *Chimel*'s and *Belton*'s mandate that search incident to arrest authority be strictly confined. However, instead of the "initiates contact" test relied on by the court below, we propose a *per se* rule that complies with *Chimel*'s and *Belton*'s command that search incident to arrest authority be strictly tied to the need for officer safety and preserving evidence. Specifically, we submit that *Belton*'s bright-line rule should be confined to cases where police seize a person inside a vehicle, the suspect is arrested, and the vehicle is searched contemporaneous with the arrest. If a person was not seized while inside a vehicle, the scope of an officer's authority to search is governed by *Chimel*, not by *Belton*. Restricting

Belton to cases where a person was seized while inside a car avoids case-by-case judgments regarding an arrestee's temporal or spatial proximity to the vehicle. Police officers and judges need only decide whether a person was seized while an occupant of a car. When police seize a person inside a car and the person is subsequently arrested, *Belton*'s *per se* rule applies.

Before explaining why our proposal is a better standard for advancing Fourth Amendment norms generally and the goals of *Belton* specifically, we describe the background and development of the *Belton* rule. *Belton* defined what constitutes "immediate control" under *Chimel* for the frequently occurring situation where police seize and arrest automobile occupants. Determined to provide officers with a "workable rule," the *Belton* Court nevertheless recognized that a *per se* rule authorizing a search of a vehicle's passenger compartment was not compatible with *Chimel*'s "immediate control" test.

The incompatibility was evident in a series of lower court rulings that upheld vehicle searches under *Chimel*'s "immediate control" test even though arrestees were far removed from their vehicles at the time of the search. Rather than forcing officers to make individualized assessments of a car occupant's "grabbing distance," *Belton* adopted a legal fiction to paper over the analytical absurdities that emerged when judges read *Chimel*'s "immediate control" test to permit vehicle searches in cases where there was no way an arrestee – handcuffed and sitting in a police cruiser – would have access to the contents of his vehicle. Although we share Justice White's concerns that the result in *Belton* called for "more caution" than that exhibited by the *Belton* majority, 453 U.S. at 472 (White, J., dissenting), we recognize that this Court is unlikely to overrule *Belton* despite the tension between *Belton*'s bright-line rule and *Chimel*'s intent to strictly confine searches incident to arrest. Our proposal, however, simultaneously satisfies *Chimel*'s mandate that an

officer's search authority be strictly tied to the traditional rationales for the search incident to arrest exception and *Belton*'s determination to provide officers with a "workable rule."

Belton's *per se* search rule does not apply to every case involving a "recent occupant" of an automobile. *Belton* never defined or addressed who is a "recent occupant" for search incident to arrest purposes. Rather, the holding in *Belton* confirms that its bright-line-rule only applies to arrestees who were "occupants" of an automobile when their vehicle was seized by the police. While it is true that an arrestee need not be inside his car when the police conduct the search, and that *Belton* itself used both the terms "occupant" and "recent occupant," *Belton*'s analytical focus was directed at an arrestee who was an occupant of a vehicle when seized by the police. The single use of the phrase "recent occupant" in *Belton* was a clear reference to the fact that Roger Belton had been seized while an occupant of an automobile, exited the vehicle, and was arrested shortly after leaving the vehicle.

ARGUMENT

I. THE BACKGROUND AND DEVELOPMENT OF *BELTON*'S *PER SE* RULE

Chimel sought to clarify the authority of the police to search incident to arrest.[2] For half a century prior to *Chimel*,

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[2] In resolving Fourth Amendment questions, this Court often considers common law rules to evaluate the reasonableness of a challenged police intrusion. *See, e.g., Wyoming v. Houghton,* 526 U.S. 295, 299-300 (1999). Generally speaking, the common law permitted searches incident to arrest. However, the legality of a search incident to arrest "has historically been formulated into two distinct propositions." *United States v. Robinson,* 414 U.S. 218, 224 (1973). The common law recognized an officer's power to seize weapons or stolen property from an arrestee's *person*. *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment,* 98 MICH. L. REV. 547, 627 (1999). Searching the *area* within the arrestee's control, "while likewise conceded in principle,

the scope of an officer's authority to search incident to arrest was "subject to shifting constitutional standards" and inconsistent statements from the Court. *Chimel*, 395 U.S. at 770 (White, J., dissenting). Prior to the *Chimel* ruling, the Court upheld extensive searches of private premises under the search incident to arrest rule. *See, e.g., United States v. Rabinowitz*, 339 U.S. 56 (1950), *Harris v. United States*, 331 U.S. 145 (1947). Under these precedents, a lawful arrest authorized a search of the entire area "considered to be in the 'possession' or under the 'control' of the person arrested." *Chimel*, 395 U.S. at 760. *Chimel* rejected that standard because it gave police too much power to conduct discretionary searches that were not justified by the historical rationales supporting the search incident to arrest exception.

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has been subject to differing interpretations as to the extent of the area which may be searched." *Robinson*, 414 U.S. at 224. To the extent that the common law "yields [an] answer," *Houghton,* 526 U.S. at 299, on the scope of an officer's authority to search the "area" within an arrestee's control, those sources do not support a broad interpretation of an officer's authority to search incident to arrest.

At the time of the framing, legal authorities did not recognize an officer's power to search an arrestee's home incident to arrest. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 602-1791*, at 1183-84 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (footnote omitted) ("The legal authors of 1761-1776 agreed that houses could be broken into to consummate the arrest process, but they did not also say that houses could be searched during that process. The assumption of most legal authorities, in other words, was that arrests and arrest warrants were not excuses to conduct general searches."). Professor Telford Taylor has asserted that "[t]here is little reason to doubt that search of an arrestee's person and *premises* is as old as the institution of arrest itself," TELFORD TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 28 (1969) (emphasis added), but the historical support for Taylor's conclusion on the scope of an officer's power to search an arrestee's home incident to arrest is extremely weak. *See* Davies, *supra,* at 646, n.276. Professor Davies has noted that the "reported decisions regarding the allowable scope of search incident to arrest first became evident in court records during the late nineteenth century." *Id.* at 638, n.250. Thus, the common law, at the time of the framing, did not recognize broad powers of search incident to arrest.

Chimel explained that although the Fourth Amendment's Warrant Clause requirements did not control search incident to arrest power, an officer's authority in this context would be judged by the same constitutional norms that governed other warrantless intrusions. Thus, the scope of an officer's authority to search incident to arrest "'must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'" *Id.* at 762 (citation omitted). Put simply, an officer's search authority must be limited to the traditional interests that justify the search incident to arrest exception.

Chimel reaffirmed the two historical purposes served by a search incident to arrest: to secure any weapon that the arrestee might use to resist arrest or escape and to preserve the integrity of any evidence the arrestee might conceal or destroy. *Id.* at 763. Mindful that a warrantless intrusion must be strictly tied to the purposes of the search, *Chimel* announced that search incident to arrest authority permits the police to search for weapons or evidence on the arrestee's person, as well as "the area 'within his immediate control'– construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*

Chimel's holding was narrow. Given that the search of Chimel's home extended beyond his person and "grabbing distance," the evidence discovered by the police was suppressed. *Id.* at 768 ("The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him."); *see also* Myron Moskovitz, *A Rule in Search of a Reason: An Empirical Reexamination of* Chimel *and* Belton, 2002 WIS. L. REV. 657, 659-60 (*Chimel* announces two rules: "a 'negative' rule and a 'positive' rule. The 'negative' rule establishes where the police *may not* search, and the 'positive' rule establishes where they *may* search.... Since the police violated Chimel's

rights under this 'negative' rule, the search was illegal."). Thus, there was no need for the *Chimel* Court to address the question of "where the police *are allowed* to search" under the "grabbing distance" prong. Id. at 660.

After the *Chimel* decision, some lower courts were "hesitant to apply the *Chimel* rationale to the search of vehicles incident to arrest." 2 WAYNE R. LAFAVE, A TREATISE ON THE FOURTH AMENDMENT § 7.1 at 499 (1978). When occupants of automobiles were placed under arrest, some lower courts applied *Chimel*'s "immediate control" rule in a manner that conflicted with the purposes and rationale of *Chimel*. As Professor LaFave explained in the first edition of his treatise on the Fourth Amendment:

> [C]ourts sometimes interpreted the *Chimel* ["immediate control" or "grabbing distance"] concept as if it were synonymous with possession; if the defendant had been driving the car immediately before his arrest, then the car was considered to be in his control and thus subject to a warrantless search. This approach quite clearly cannot be squared with *Chimel*, where the Court explicitly rejected the notion that it was reasonable to search a place merely because it was in the possession of the arrestee. Equally inconsistent with *Chimel* is the proposition, accepted by a few courts, that the part of the car's interior which the defendant could have reached at the time the vehicle was stopped by the police somehow remains a fixed area of "immediate control" even after the defendant has alighted from the automobile. Under *Chimel*, the question is not whether the defendant could have reached a certain area on a prior occasion; rather, it is whether the defendant can

> *presently* (i.e., at the moment of search) reach that area.

Id. at § 7.1 at 500-01 (footnotes and citation omitted).

New York v. Belton built directly on *Chimel*'s holding. *Belton* addressed the following narrow issue: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*?" 453 U.S. at 455 (emphases added). In answering this question, the Court reaffirmed what *Chimel* had emphasized: a search incident to arrest "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Id.* at 457 (citation and internal quotation marks omitted). The Court also sought a "'single familiar standard'" to guide police officers in determining "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants."*Id.* at 458-59. *Belton* held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460 (footnotes omitted). The Court explained that its ruling "does no more than determine the meaning of *Chimel*'s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of search incident to lawful custodial arrests." *Id.* at 460, n.3.

While the *Belton* Court merely sought to resolve how *Chimel*'s "immediate control" test should be applied to occupants of automobiles, the means employed by the Court undermined *Chimel*'s intent to strictly confine search incident to arrest authority to "'the exigencies of the situation [that] made that course imperative.'" *Chimel*, 395 U.S. at 761, quoting *McDonald v. United States*, 335 U.S. 451, 456

(1948). A *per se* rule that authorized a search of a vehicle's passenger compartment was not compatible with the "immediate control" or "grabbing distance" test. When *Belton* was decided, it was standard police practice to have an arrestee secured and removed from a vehicle *prior* to the search. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: §7.1 (a), at 435, n. 15 (3d ed. 1996); *See* Moskovitz, *supra* at 675-76 (Current police policies still recommend removing occupants away from the vehicle prior to a search.). Thus, when an officer searches a car, the passenger compartment of the vehicle is unlikely to be within the arrestee's "immediate control" or grabbing distance. In fact, most of the pre-*Belton* lower court cases that applied *Chimel* to vehicles involved "situations in which the arrestee was outside of the vehicle at the time of the search." 2 LAFAVE, *supra* at § 7.1 at 501. Although judges upheld vehicle searches incident to an arrest, many of these rulings were based upon "an assumption that the arrestee was 'possessed of the skill of Houdini and the strength of Hercules' and thus could readily enter the car notwithstanding his distance from it and the manner of his custody." *Id.*

Belton resolved the incompatibility between the "immediate control" test and a *per se* rule by adopting a legal fiction: "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Belton*, 453 U.S. at 460, quoting *Chimel*, 395 U.S. at 763. Although *Belton* denied that its holding "alter[ed] the fundamental principles established in . . . *Chimel*," *id.* at 460, n.3, application of *Belton*'s legal fiction in the typical case exposes a conflict between *Belton*'s determination to provide officers with a "workable

rule," *id.* at 460, and *Chimel*'s goal to strictly confine an officer's search incident to arrest authority.[3]

A. The Factors Compelling *Belton*'s Bright-Line Rule

When an arrest occurs indoors, deciding what constitutes an arrestee's "immediate control" depends on the particular facts of each case. *See* 3 LAFAVE, *supra* § 6.3 (c) at 305-12. In *Belton*, this Court recognized that determining the proper scope of a vehicle search incident to the arrest of an occupant involves a "problematic" application of *Chimel*'s "immediate control" rule. *Belton*, 453 U.S. at 460, n.3. Applying *Chimel's* "immediate control" test in this context is problematic for both practical and doctrinal reasons.

As a practical matter, an officer cannot remove a motorist from a car, effectuate an arrest, secure the arrestee and search his "grabbing distance" in a single stroke. This dilemma is particularly vexing when a single officer encounters a multi-occupant vehicle, as was the case in *Belton*. When conducting the arrest of a motorist or passenger inside a car, an officer first secures an arrestee to protect his or her own safety. Then an officer exercises his authority to search the area within the arrestee's immediate control. In all but the most extraordinary case, when the

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[3] The first substantive question asked during the oral argument in *Florida v. Thomas*, 532 U.S. 774 (2001), highlights the tension between *Belton*'s *per se* rule and *Chimel*'s intent to strictly confine searches incident to arrest to those contexts where a weapon or evidence might be accessible to an arrestee: "QUESTION: And do you say that *Belton* allows the person outside the car to be taken away, secured, removed, and then the officers can go back and search the car?" Tr. Oral Arg. *Florida v. Thomas*, No. 00-391 at 4-5; *see also id.* at 6 (Justice Souter asking: "Well, [the search] may have been part of one ongoing transaction, but it - - that does not, I think, affect the fact that the moment of the search seems to have been totally untethered from the justifications for the *Belton* rule because, as I understand it, at the time the search was made, the defendant was in the house. The defendant couldn't reach into the car for weapons or for evidence.").

officer begins a search incident to arrest, the arrestee is no longer inside the vehicle, *see United States v. Karlin*, 852 F.2d 968, 971 (7th Cir. 1988) ("It seems quite likely that, in instances where occupants of a car are arrested, they will be outside the car and will have been placed under some measure of security before the car is searched."), *cert. denied*, 489 U.S. 1021 (1989), just as a pedestrian will be secured before an officer searches a container or object within the grabbing distance of the pedestrian. *See, e.g., Draper v. United States*, 358 U.S. 307, 314 (1959) (search of a "zipper bag" that arrestee was carrying was valid search incident to arrest).

Chimel's "immediate control" rule also created doctrinal problems when applied to occupants of automobiles. "Sometimes it was assumed that the *Chimel* holding did not carry over to the vehicle cases." 2 LAFAVE, at § 7.1 at 499. Even when courts applied *Chimel*'s holding to cars, the "immediate control" rule offered hazy answers for officers and the judiciary. The "immediate control" test produced inconsistent results when applied on a case-by-case basis to the arrest of a car occupant, *see Belton*, 453 U.S. at 460-61, and lower court rulings often applied *Chimel*'s "immediate control" rule in a manner that conflicted with the intent of that decision. 2 LAFAVE, at § 7.1 at 500-01. Indeed, *Belton* acknowledged that "no straightforward rule ha[d] emerged from the litigated cases" regarding the extent of police authority to search a car incident to the arrest of an occupant. 453 U.S. at 459.

Accordingly, *Belton*'s legal fiction was designed to make it easier for police and judges to apply *Chimel*'s "immediate control" test to a person seized while occupying a car.

> [*Belton*] adopted a factual presumption that, if the arrestee is an occupant of the vehicle, the arrestee can reach in the vehicle and get

> a weapon or destroy evidence. Following *Belton*, a showing of the actual fact of occupancy would automatically provide the presumed fact of access to the passenger compartment which is required by *Chimel* as a prerequisite for a warrantless search of a vehicle incident to arrest.

Glasco v. Virginia, 513 S.E.2d 137, 144 (Va. 1999) (Lacy, J., concurring). Instead of police officers conducting individualized on the spot assessments of an automobile occupant's "grabbing distance," *Belton* established a bright line to resolve the ambiguities that arose when applying the "immediate control" test to an arrestee seized while inside a vehicle. For someone seized while an occupant of a car, *Chimel*'s "immediate control" test would be triggered at the moment the police seizure occurred, and would extend to the entire passenger compartment of the vehicle.

B. The Factors That Compelled *Belton*'s Holding Are Absent When An Officer Seizes A Person Outside A Vehicle

The practical and doctrinal concerns that compelled *Belton*'s holding are absent when a suspect is seized outside a vehicle. When an officer arrests a pedestrian, he does not confront the practical quandary that arises when attempting to arrest a person seated inside a car: simultaneously removing a suspect from a vehicle, searching the arrestee's person for weapons or evidence, and searching the "grabbing distance" of the arrestee all in a single stroke. Consequently, the concerns that prompted *Belton* to adopt a legal fiction in order to give officers a "workable rule," *Belton*, 453 U.S. at 460, are extraneous to an arrest of a pedestrian. Instead, *Chimel* controls the scope of an officer's authority to search incident to arrest.

Similarly, when an officer seizes a person *outside* a vehicle before executing an arrest, there is no longer a need

for a bright-line rule that defines the arrestee's "immediate control" *inside* the vehicle. "The objective and the virtue of the *Belton* decision was to obviate uncertainty in applying the *Chimel* 'lunge area' rule to automobile searches. *Belton* simplified the task of [police] and the courts by declaring that the entire passenger compartment would be deemed within the arrestee's reach, and thus subject to search, when a vehicle occupant is arrested." *Idaho v. Foster,* 905 P.2d 1032, 1038 (Idaho Ct. App.1995). When the seizure occurs outside a car, however, the ambiguity regarding an arrestee's "grabbing distance" inside the car is gone. As the District of Columbia Circuit has recognized, "[n]o such ambiguity exists . . . where the police come upon the arrestees outside of an automobile. Under such circumstances, the rationale for *Belton*'s bright-line rule is absent; instead, the normal framework of *Chimel* applies." *United States v. Fafowora,* 865 F.2d 360, 362 (D.C. Cir.), *cert. denied,* 493 U.S. 829 (1989). *See also United States v. Christian,* 187 F.3d 663, 671, n.6 (D.C. Cir. 1999); *People v. Stehman*, 783 N.E. 2d 1, 7-8 (Ill. 2002) ("where police first confront the arrestee outside his vehicle, the ambiguity which *Belton* seeks to avoid no longer exists, and the rationale for its bright-line rule is absent"). Indeed, a contrary rule is inconsistent with the holding of *Vale v. Louisiana*, 399 U.S. 30 (1970). *Vale* explained that "[i]f a search of a house is to be upheld as incident to an arrest, that arrest must take place *inside* the house, not somewhere outside – whether two blocks away, twenty feet away, or on the sidewalk near the front steps." *Id.* at 33-34 (citations omitted). If police cannot justify a house search as incident to an arrest of a "recent occupant" of that house, they should not be able to justify a car search simply because the arrestee is a "recent occupant" of that car.

Petitioner contends that "it is the mere fact that the individual was arrested while he was a recent occupant of the vehicle that justifies a *Belton* search." Br. Pet. 22. This argument permits an automatic and suspicionless search of

an arrestee's car and the private possessions therein without the concerns that compelled *Belton*'s holding. More importantly, if *Belton* is extended to a case where police seize an individual *outside* of a car, it is severed from its foundation in *Chimel*. As noted, both *Chimel* and *Belton* recognized that the scope of a search incident to arrest "'must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" *Chimel*, 395 U.S. at 762; *Belton*, 453 U.S. at 457. In practice, this means that searches incident to arrest must be confined to "the arrestee's person and the area 'within his immediate control.'" *Chimel*, 395 U.S. at 763. If police are automatically permitted to search an arrestee's car even though the vehicle is not "'within his immediate control,'" they are not obeying the rule announced in *Chimel*. Put simply, "[i]f there is no connection shown between a person's occupancy of a vehicle and his arrest, then extending the scope of the search incident to arrest to the vehicle is neither 'tied to' nor 'justified by' circumstances of the arrest." *Glasco v. Virginia,* 513 S.E.2d at 144 (Lacy, J., concurring).

Petitioner's position that *Belton*'s *per se* rule applies to a recent occupant of a vehicle, Br. Pet. 24, conflicts with *Chimel*'s rationale and purpose. *Chimel* warned that a search incident to arrest provides no justification "for routinely searching any room other than that which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." 395 U.S. at 763. Similarly, there is no comparable justification for searching an arrestee's vehicle unless it is "'within his immediate control.'" *Id.* at 763. As the Minnesota Supreme Court aptly put it, "*Belton* does not permit searches of arrestees' vehicles; it permits searches of occupants' vehicles incident to lawful arrest." *Minnesota v. Robb,* 605 N.W. 2d 96, 101 (Minn. 2000).

II. *BELTON*'S HOLDING DOES NOT EXTEND TO ANY "RECENT OCCUPANT" OF AN AUTOMOBILE

Petitioner and its *amici* argue that *Belton* makes no distinction between "occupants" and "recent occupants" of automobiles. Br. Pet. 7-8 & 10-12; Br. U.S. 11 ("*Belton* applies as long as the arrestee is a 'recent occupant' of the vehicle."). The notion that *Belton*'s *per se* rule applies to any recent occupant of a vehicle misreads Justice Stewart's opinion. Moreover, extending *Belton* to "recent occupants" will create greater uncertainty regarding an officer's authority to search incident to arrest.

A. *Belton*'s *Per Se* Rule Applies Only When Police Seize A Person In A Car And the Person Is Subsequently Arrested

Belton's holding does not extend to any "recent occupant" of a car. As the nation's most prominent Fourth Amendment scholar has explained, "*Belton* applies only in the case of 'a lawful custodial arrest of the occupant' of the vehicle." 3 LAFAVE, *supra* §7.1(b) at 436 (footnotes omitted).

A judicious reading of *Belton* confirms that the Court's ruling only applies to an arrestee who was seized while an occupant of a car. First, the facts show that Roger Belton and three others were occupants of a car when their vehicle was seized for speeding. Although Belton had exited the vehicle before being placed under arrest, thus making him a "recent occupant," his status as a "recent occupant" was the direct result of the officer's lawful decision to seize him while he was inside the car and to arrest him after detecting evidence of contraband in plain-view.

Next, when describing the precise issue before it, *Belton* indicates that the Court was focusing on arrestees who were occupants of automobiles – not "recent occupants." In the opening sentences of his opinion, Justice

Stewart wrote: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile *in which he was riding*? That is the question at issue in the present case." 453 U.S. at 455 (emphases added).

Significantly, *Belton*'s holding is limited to situations where an arrestee is seized while an "occupant" of a vehicle. The Court stated: "[W]e hold that when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460 (footnotes omitted) (emphasis added). Finally, when applying this holding to the facts, Justice Stewart explained that the defendant's "jacket was located inside the passenger compartment of the car in which [Belton] had been a passenger just before he was arrested," thus making the jacket "'within the arrestee's immediate control'" for purposes of *Chimel*. *Id.* at 462 (footnote omitted).

In sum, although it is true that an arrestee need not be inside a vehicle at the moment the officer conducts the search, and that *Belton* itself used both the terms "occupant" and "recent occupant," *see id.* at 460, *Belton*'s analytical focus was directed toward an arrestee who was an occupant of a car when seized by the police. The lone use of the term "recent occupant" in *Belton* was an obvious reference to an arrestee who had been seized by the police while he was an occupant of an automobile and was later arrested after exiting the vehicle. *See also Glasco v. Virginia,* 513 S.E. 2d. at 144 (Lacy, J., concurring) ("A review of the cases surveyed and cited [in] *Belton* as supporting the factual presumption of access to the vehicle created in that case reveals that in all but one case, the arrestee was arrested while in the vehicle, and in all the cases the search of the vehicle occurred after the arrestees exited the vehicles at the

direction of the police and while they were still within close proximity of the vehicles."). *Belton* never defined or addressed who is a "recent occupant" for search incident to arrest purposes. *See Texas v. Kelly,* 963 S.W.2d 866, 869 (Tex. App – San Antonio 1998) ("the 'bright-line' test [of *Belton*] does not address who is a 'recent occupant' for purposes of being subject to a *Belton*-type vehicular search rather than a *Chimel*-type search.").

B. The Term "Recent Occupant" Is Inherently Ambiguous

Petitioner and its *amici* assert that the ruling below blurs the bright-line rule established in *Belton.* Br. Pet. 14; Br. U.S. 16-17. However, extending *Belton* to cover persons who have exited their vehicles prior to being seized by the police will generate greater uncertainty and ambiguity regarding an officer's authority to search a vehicle incident to arrest.

Several lower courts have noted that if *Belton* is extended to permit a search whenever police arrest a "recent occupant" who was not seized while inside a car, the clarity of *Belton* will be diminished. As one court explained, if *Belton* "is stretched to encompass the search of a vehicle that was voluntarily vacated by a person before confrontation with the police began, the 'bright-line' rule becomes hazy and uncertain. [Police] would be left to wonder what combination of temporal and spatial proximity the arrestee must have to the vehicle at the time contact was initiated to allow the search without a warrant." *Michigan v. Fernengel,* 549 N.W.2d 362, 363 (Mich. App. 1996). If *Belton* is applied to every "recent occupant," police will have to make case-by-case determinations regarding whether an arrestee was a "recent" occupant of a vehicle and the arrestee's proximity to the vehicle at the time of arrest. *See Texas v. Kelly,* 963 S.W.2d at 869. When applied to a motorist who was not seized while inside a vehicle, the term "recent occupant" has

various connotations, and invites subjective judgments regarding a person's connection to a vehicle.

Even courts that have adopted a "recent occupant" rule recognize that case-by-case assessments are still necessary to determine an officer's authority to search incident to arrest. For example, the Colorado Supreme Court extended *Belton* to cover a situation "where the occupant of a vehicle anticipates police contact and exits the vehicle immediately before that contact occurs." *Colorado v. Savedra,* 907 P.2d 596, 599 (Colo. 1995) (*en banc*). By extending *Belton* in this context, the court acknowledged that the "issue of temporal proximity between the police encounter and the defendant's presence in the vehicle is the main factor courts consider in determining whether a person is a recent occupant of a vehicle for purposes of *Belton*." *Id.* In practice, this means that the officer in the field will first have to decide whether the arrestee has been outside of a car for a significant period of time, subject to the second-guessing of judges.

Other line-drawing problems have emerged when courts extend *Belton* to an arrestee who was not physically occupying a car when seized by the police. In *United States v. Sholola,* 124 F.3d 803 (7th Cir. 1997), the Seventh Circuit concluded that the defendant was "'positively linked'" to a vehicle when, during a conversation with an officer he had "pointed to a vehicle, opened the front driver's side door with a set of car keys in his hand, and stated, 'See, it's my car.'" *Id.* at 817. Because the defendant was "positively linked" with the automobile, the Seventh Circuit ruled that *Belton* permitted a search of the car incident to arrest, even though the arrestee was neither an occupant nor a "recent occupant" of the vehicle. Judge Wood concurred in the judgment in *Sholola,* but warned that judges should be mindful "not to extend [*Belton*] too far beyond its facts." *Id.* at 823 (Wood J., concurring). Judge Wood feared that the

majority's use of the phrase "positively linked" might "be misunderstood in a future case." *Id.*

Sholola's extension of *Belton* illustrates the dangers of extending *Belton* to "recent occupants." Deciding whether a person is "positively linked" to a car when he or she is seized outside the car requires considering the particular facts of each case. Similarly, determining whether a person is a "recent occupant" requires a particularized assessment of the facts, and requires the type of case-by-case analysis and subjective judgment that petitioner criticizes. *See* Br. Pet. 18. Moreover, extending *Belton* to cover "recent occupants" eviscerates *Chimel*. Judge Wood's criticisms of the "positively linked" test are equally pertinent to a "recent occupant" standard:

> [Some] "[recent occupants]" would plainly fall outside the scope of *Belton*. For example, the police could observe a suspect parking a car in an off-street legal parking lot, and then walking two blocks away from it, keeping both vehicle and suspect under constant surveillance. If they then arrested the suspect, in my view they would need something other than *Belton* to justify a search of the car, even though [the defendant] might be said to [be a "recent occupant" of the car].

Sholola, 124 F. 3d at 823 (Wood J., concurring).

Petitioner and the United States recognize that a "recent occupant" test is not a bright-line rule. Br. Pet. 26-27; Br. U.S. 29. Petitioner's proposal is to have officers decide "based on their training, experience, and the totality of the circumstances whether the arrest occurred in close spatio-temporal proximity to the arrestee's occupancy of the vehicle." Br. Pet. at 25. Rather than proposing a solution, the United States essentially urges the Court to ignore the

ambiguity associated with the term "recent occupant." The Solicitor General asserts that there is "no reason to deny officers the certainty and protection afforded by *Belton* in the more typical case, such as this one." Br. U.S. at 19. The Solicitor General also states that "[i]n determining whether *Belton* authorizes a vehicle search in outlying cases, courts should assess the reasonableness of applying the *Belton* rule in light of the basic concerns underlying the search-incident-to-arrest doctrine and the facts and circumstances of the particular arrest and search at issue." *Id.* at 28.

The petitioner's "totality of the circumstances" alternative is not a bright-line rule. Petitioner's submission contains the same flaws inherent in a "recent occupant" test. Attaching a "close spatio-temporal proximity" prong to a "recent occupant" rule does not eliminate the line-drawing problems for determining the scope of an officer's search incident to arrest powers. As the Fourth Circuit recently acknowledged, "[t]he *Belton* rule cannot be stretched so as to render it limitless by permitting officers to search any vehicle from which an arrestee has emerged, regardless of how much time has elapsed since his exit or how far he is from the vehicle when arrested." *Thornton*, 325 F.3d at 196. Thus, under a "close proximity" prong, officers and judges will still be burdened with weighing temporal and spatial factors to determine when a vehicle search is permissible incident to a lawful arrest.

The Solicitor General ducks the difficult question of defining when an arrestee qualifies as a "recent occupant" by arguing that the facts here show that respondent was clearly a "recent occupant" and that his case represents "the more typical case." Br. U.S. 19. The Solicitor General's claim that the fact pattern here is the typical scenario for *Belton* searches is unsubstantiated by the record and contradicted by the cases cited by the United States. *See* Br. U.S. 19, n.5. Furthermore, what the Solicitor General characterizes as "outlying cases," *id.* at 28, have generated a substantial

amount of litigation in the lower courts regarding the proper scope of *Belton*'s automatic search rule. *See* 3 LAFAVE, §7.1(a) at 436-37, n. 25 & 26 (3d ed. 1996 & Supp. 2003) (citing cases illustrating split among lower courts on *Belton*'s applicability to arrestees who were recent occupants of vehicles); *United States v. Green*, 324 F. 3d 375, 378-79 (5th Cir. 2003) (same). The Solicitor General's proposed solution for these cases is a vague, standardless test. If bright lines are essential to guide officers and judges, then *Belton*'s holding should be left undisturbed and this Court should reject any proposals that require police officers to assess the totality of the circumstances when determining a suspect's recent occupancy of a vehicle.

More importantly, whether petitioner and its *amici* choose to supplement a "recent occupant" rule with a "close proximity," or "positively linked," or "close association" prong, the analytical flaw with all of these addendums is that they allow police officers and judges to interpret *Chimel*'s "immediate control" test as if it were identical to a test of "possession." This type of reasoning recalls an era of this Court's search incident to arrest jurisprudence that permitted police to search the area considered to be in the "possession" or under the "control" of the arrestee. For example, in *Harris v. United States*, 331 U.S. 145 (1947), a five-hour search of a four-room apartment was upheld as a valid search incident to arrest because the arrestee "was in exclusive possession" of the premises. *Id.* at 152. *See also United States v. Rabinowitz,* 339 U.S. 56, 63 (1950) (relying on *Harris* to uphold an hour and a half search of defendant's office as a valid search incident to arrest). The logic that supported the results in *Harris* and *Rabinowitz* was firmly rejected in *Chimel*. Despite that rejection, petitioner proposes that suspicionless car searches are *per se* reasonable conditioned only upon the arrest of a recent occupant. If Fourth Amendment principles "preclude [] indulgence in the fiction that the recesses of a man's house are like the pockets

of the clothes he wears at the time of his arrest," *Harris*, 331 U.S. at 164 (Frankfurter, J., dissenting), then those same principles preclude treating a man's vehicle as the equivalent of a shopping cart pushed by the arrestee at the time of this arrest.

C. A "Recent Occupant" Rule Is Not Required By This Court's Precedents

Michigan v. Long, 463 U.S. 1032 (1983) has not, directly or indirectly, decided the issue preserved in this case. The dicta in *Long* provides no basis for extending *Belton* to "recent occupants." In *Long,* police observed Long's car traveling erratically and speeding. After watching the car swerve into a ditch, the police stopped to investigate. "As [the officers] left their vehicle and walked forward, [Long]...left from the driver's seat side" of his vehicle and met the officers at the rear of the car. *People v. Long*, 288 N.W. 2d 629, 630 (Mich. App. 1980). Suspecting that Long was intoxicated, the officers asked to see his license. As Long walked toward the open door of his car, the officers observed a large hunting knife on the floor. After frisking Long, the police conducted a search of the passenger compartment for other weapons. Inside the car they found marihuana. *Long* held that a protective search of a passenger compartment is valid when reasonable suspicion exists that a car contains weapons potentially dangerous to police.

In dicta, this Court stated "if the officers had arrested Long for speeding or for driving while intoxicated, they could have searched the passenger compartment under *New York v. Belton*." *Long*, 463 U.S. at 1035, n.1; *see also id.* at 1049, n.14 ("[T]he 'bright line' that we drew in *Belton* clearly authorizes... a search whenever officers effect a custodial arrest."). Despite this dicta, the facts in *Long* are consistent with our analysis of *Belton*'s *per se* rule being limited to cases where police seize a person while he or she is an occupant of a car. Long was inside his car when the

deputies stopped to investigate. *See* 288 N.W. 2d at 630. From that moment forward, Long was seized for Fourth Amendment purposes. *See Long*, 463 U.S. at 1051 (noting that during any investigative stop, police may detain person against his will). His ability to exit his vehicle before being ordered to do so by the police did not convert the confrontation into a non-seizure nor negate the applicability of *Belton*'s *per se* rule. *See infra* Part III.

This Court has never held that application of *Belton*'s *per se* rule should have no factual predicate other than the lawful arrest of a recent occupant, as suggested by petitioner or as implied in *Long*'s dicta. Such a holding would constitute a radical departure from the standards announced in *Chimel* and *Belton*. Although in recent years this Court has greatly enlarged the automobile exception, searches under that doctrine are never automatic. Such searches always require probable cause that contraband is inside a car. *See Houghton*, *supra*. Similarly, searches under *Long* require reasonable suspicion that a car's passenger compartment poses a threat to an officer's safety; *Long* does not authorize an automatic search. *See Long*, 463 U.S. at 1049, n.14 ("We stress that our decision does not mean that the police may conduct automobile searches whenever they conduct an investigative stop."). A "recent occupant" rule, however, allows an automatic and suspicionless search of an automobile. This Court has never announced such a holding. Since *Chimel*, this Court's search incident to arrest precedents have embraced Justice Frankfurter's view that "[a]uthority to arrest does not dispense with the requirement of authority to search." *Harris,* 331 U.S. at 165 (Frankfurter, J., dissenting).

III. *BELTON*'S *PER SE* RULE SHOULD BE RESTRICTED TO CASES WHERE A PERSON WAS SEIZED WHILE AN OCCUPANT OF A CAR

The ruling below confines *Belton*'s bright-line rule to cases where an officer initiates contact with a suspect found inside a vehicle. Although the ruling below sought to promote the aims of *Chimel* and *Belton*, judgments about when, where, or how an officer initiates contact with an automobile occupant, the degree or type of police contact, or whether the occupant has "anticipated" possible imminent police contact, do not in our view provide the best reconciliation of *Chimel* and *Belton*. A more workable and efficient rule is available to resolve the line-drawing problems inherent in deciding the "grabbing distance" of a "recent occupant" of a vehicle. The *per se* rule of *Belton* should be limited to cases where a person is seized while inside a car. If police arrest a recent occupant of a vehicle who was not seized while inside the vehicle, the scope of an officer's authority to search incident to arrest is governed by *Chimel,* not *Belton*. Our *per se* rule parallels *Belton*'s holding, is easily applied by police officers, and is consistent with analogous rules that govern an officer's authority to investigate and detain occupants of automobiles. Most importantly, our proposal satisfies *Chimel*'s mandate that an officer's search power be strictly tied to the traditional rationales for the search incident to arrest exception.

First, the facts and holding of *Belton* establish a *per se* rule only when a person is seized while an occupant of a car. Although Belton was ordered out of the car, thus making him a "recent occupant" of the vehicle, his status as a recent occupant was the direct consequence of the officer's lawful decision to seize Belton while he was an occupant of a vehicle. Under these circumstances, *Belton* held that "when a policeman had made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that

automobile." 453 U.S. at 460 (footnotes omitted) (emphasis added).

Second, confining *Belton*'s bright line to cases where a person was seized while inside a car produces a rule that is easily understood and followed by police officers. Well-trained officers know when they have lawfully seized an occupant of a vehicle. *See Delaware v. Prouse*, 440 U.S. 648 (1979) (random traffic stops are unconstitutional; police may seize a vehicle where probable cause or reasonable suspicion exists that a motorist has committed a traffic violation or other crime). Thus, whenever police detain a vehicle to investigate a traffic violation, as they did in *Belton* or *Long*, they have seized the vehicle and its occupants. If during the course of that seizure, probable cause to arrest develops, *Belton*'s *per se* rule applies regardless of whether the occupants of the vehicle remain seated in the car, have been removed from the car, or have exited the vehicle voluntarily.

A few lower courts have applied *Belton* in "recent occupant" cases to remove the concern that officers might have to "race" to a suspect's vehicle to prevent the suspect from exiting from his or her car. *See, e.g., Nebraska v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App.1992) ("In order to conduct a valid search, police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of his or her vehicle."); *cf. Colorado v. Savedra,* 907 P.2d at 600; *United States v. Thornton*, 325 F.3d at 196. Confining *Belton*, however, to cases where police seize a car occupant eliminates the concern that officers will have to "race" from their patrol cars to prevent an occupant from exiting his car. If police pull over or detain a vehicle while the suspect is inside, as they did in *Gonzalez*, 487 N.W.2d at 568, a suspect cannot "*Belton*-proof" the car by exiting the vehicle before the officer can vacate his cruiser. A "seizure" occurs "the moment [a motorist] was pulled over by" an officer. *Ohio v. Retherford*, 639 N.E. 2d 498, 506 (Ohio App. 1994); *cf.*

California v. Hodari D., 499 U.S. 621, 626 (1991) (explaining an "arrest requires *either* physical force... *or*, where that is absent, *submission* to the assertion of authority"). Thus, even a suspect who voluntarily exits his vehicle during a traffic stop is still considered "seized" for Fourth Amendment purposes until the traffic stop is completed. *See New York v. Class*, 475 U.S. 108, 116 (1986) (noting that officers could effect the seizure of a motorist who voluntarily exited his car until "they completed their investigation"). Further, under our proposal, an officer will not have to inquire why a motorist exited his vehicle. Where a person is lawfully seized inside his vehicle and arrested, *Belton* applies regardless of why an arrestee exits the car.

Third, limiting *Belton* to cases where a person was seized while an occupant of a car produces a rule that is consistent with analogous Fourth Amendment rules governing an officer's power to investigate and detain occupants of automobiles. For example, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (*per curiam*), held that during a traffic stop police may routinely order a driver out of his vehicle. *See also Maryland v. Wilson*, 519 U.S. 408 (1997) (extending *Mimms*' holding to passengers). In reaching this conclusion, however, *Mimms* emphasized that it was not holding "that whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car." *Mimms*, 434 U.S. at 111, n.6 (internal quotation marks omitted).

Mimms and *Wilson* restrict forcible exit orders of car occupants to lawful seizures. A contrary rule would subject anyone in a car to an arbitrary intrusion. Likewise, if police have no basis for seizing an automobile occupant, that person's decision to exit his vehicle should not occasion an automatic search of his vehicle merely because the person is later arrested outside the vehicle. *Compare, Vale*, *supra* (a search of a home cannot be upheld as a valid search incident to arrest if the arrest occurred outside the house). A few

lower courts, however, have applied *Belton* to cases where police arrest "recent occupants" of vehicles who were not subject to seizure while inside their vehicles. *See Glasco v. Virginia, supra*; *Colorado v. Savedra, supra.* The courts reasoned that a *per se* search is valid because "a knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact." *Glasco*, 513 S.E.2d at 142. This reasoning, however, proves too much.

By analogous reasoning, the police could search a basement or kitchen that a suspect has just exited prior to his arrest in the living room because the arrestee has the "same motive and opportunity to destroy evidence or obtain a weapon" as a person who was initially seized by the police while in the basement or kitchen. This type of sloppy logic was rejected in *Chimel*: "There is no comparable justification . . . for routinely searching any room other than that in which an arrest occurs – or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." *Chimel*, 395 U.S. at 763. In sum, if police do not have the authority to seize a person sitting in a car, then that person's decision to exit his vehicle cannot justify an automatic search of the vehicle if the person is subsequently arrested outside the car.

Finally, our proposal avoids the line-drawing problems inherent in petitioner's proposal that has officers deciding whether an arrestee was in "close spatio-temporal proximity" to a vehicle for search incident to arrest purposes. Officers and judges should only decide whether a person was seized while an occupant of a car. When police seize a person in a car, and the person is subsequently arrested, *Belton*'s *per se* search rule applies.

Under our proposal, the search of respondent's vehicle was unreasonable because respondent was not seized while an occupant of a vehicle.

CONCLUSION

For the reasons stated above, the judgment of the Court of Appeals of Arizona should be affirmed.

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